

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

F.C.A.NO.359 OF 2017

ORAL JUDGMENT (Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant – husband, has challenged the order dated 21.08.2017 passed by the Judge of Family Court at Hyderabad in O.P.No.1535 of 2015, whereby the petition filed by him for divorce, has been dismissed.

On a perusal of aforesaid order, it is revealed that it was reported by both the parties that Rs.4,00,000/- (Rupees four lakhs only) has already been received by the respondent – wife out of the agreed amount of Rs.6,50,000/- (Rupees six lakhs fifty thousand only). However, the respondent disputed certain contents of the memorandum of understanding dated 6.5.2017, stating that Rs.6,50,000/- was agreed to be received only for herself towards permanent alimony and not for their minor son. However, the appellant submits that the amount of Rs.6,50,000/- was agreed to be paid towards permanent alimony both to the respondent as well as to their son. The respondent further submits that she has to receive her sarees, clothes, one gram gold in two bangles, normal bangles and other house hold articles and unless the appellant returns the same, she is not willing to give consent for divorce. In view of these circumstances, the petition filed by the appellant and the respondent before the court below for divorce on mutual consent, was dismissed.

During the pendency of this appeal, it is agreed that the appellant shall pay balance amount of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) and

an additional amount of Rs.50,000/- (Rupees fifty thousand only) in lump-sum for the other articles claimed by the respondent – wife, i.e., in all Rs.3,00,000/- (Rupees three lakhs only) towards full and final settlement towards permanent alimony of the respondent.

We note that in the memorandum of understanding dated 6.5.2017 it is specifically stated that the appellant agreed to pay an amount of Rs.6,50,000/- to the respondent towards full and final settlement for the maintenance and permanent alimony of his wife and their minor son Yashwin. However, during the proceedings in O.P.No.1535 of 2015, respondent / wife taken a U-turn and stated before the trial court that the amount mentioned in the memorandum of understanding is *qua* her permanent alimony and it was not for their minor child.

The appellant has come forward before this court and submits that let an amount of Rs.6,50,000/-, as agreed to before the trial court, plus additional amount of Rs.50,000/- i.e., in all Rs.7,00,000/- (Rupees seven lakhs only) be made as full and final settlement for the maintenance and permanent alimony of the respondent, and with regard to rights of the child, the same may be left open for settlement in different proceedings.

The respondent – wife who is personally present in court agreed for the amount of Rs.6,50,000/-, plus additional amount of Rs.50,000/- for other articles claimed by her and gave her consent for dissolution of their marriage.

It is not in dispute that out of Rs.6,50,000/- agreed to be paid by the appellant, an amount of Rs.4,00,000/- (Rupees four lakhs only) has already been

paid by the appellant to the respondent. For the balance amount of Rs.2,50,000/- (Rupees two lakhs fifty thousand only) and additional amount of Rs.50,000/- (Rupees fifty thousand only), now agreed to be paid towards other articles claimed by the wife, the appellant has given two cheques bearing Nos.103040 and 103041 dated 30.10.2017 and 16.11.2017 respectively, drawn on City Bank, payable at any City Bank branch in India. The respondent – wife has accepted the said cheques in the open court, subject to realization, and states that let their marriage be dissolved by mutual consent.

It is further not in dispute that M.C.Nos.6 and 60 of 2016 filed by the respondent – wife on the file of Family Court at Secunderabad, have been dismissed for default vide order dated 9.5.2017, i.e., after the agreement dated 6.5.2017 arrived at between the appellant and the respondent. Further, O.P.No.723/2016 filed by the respondent – wife on the file of Family court at City Civil Court, for restitution of conjugal rights, was dismissed for default on 25.7.2017 and the D.V.C No.101/2017 IV Special Magistrate Court at Erramanzil, Hyderabad filed by her, was withdrawn vide order dated 13.5.2017.

It is agreed by the respondent – wife that she will not seek for restoration of the above said cases in future.

The respondent – wife agreed that C.C.No.123/2016 filed by her under Section 498-A of IPC on the file of XV ACMM at Nampally may be quashed in view of the settlement arrived at with the appellant.

In view of the statement made by the respondent, we hereby quash the proceedings in C.C.No.123 of 2016 for the offence under Section 498-A of IPC, pending on the file of XV Additional Chief Metropolitan Magistrate at Nampally.

For the foregoing reasons, we hereby dissolve the marriage, which had taken place between the appellant and the respondent on 26.06.2014 and registered on 29.11.2014 before the Sub- Registrar, Golconda, Hyderabad.

The appeal is accordingly disposed of. No costs.

Miscellaneous petitions pending if any, shall stand closed.



SURESH KUMAR KAIT,J

P.KESHA RAO,J

DATE:16—11—2017

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