

251 (2 cases)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CR-134 of 2018 (O&M)
Date of decision : 31.05.2018**

Kidu Ram Lamba

...Petitioner

Vs.

Om Patti

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. R.S. Chauhan, Advocate
for respondent.

...

ANIL KSHETARPAL, J. (Oral)

In this revision petition, husband and wife are litigating on account of marital discord between them. Wife is the respondent herein. The husband filed earlier suit which was dismissed vide judgment dated 14.03.2012. Husband filed the first appeal. During the pendency of the first appeal, parties entered into settlement and wife suffered a statement to the following effect:-

“Stated that I have entered into a compromise with the appellant. Appellant shall continue pay an amount of ₹ 5000/- per month. Neither I have filed any appeal nor in future, shall I file any appeal. I am residing in a house situated at Narwana which is measuring 227 sq. yards and over that house, my occupation shall be as owner and I shall not claim any property.”

On the basis of aforesaid statement, appeal filed by the husband was disposed of in terms of the settlement and operative part of the judgment is as under:-

“Heard, In view of the above mentioned statements made by the parties and in view of the compromise between them, the present appeal is hereby stands dismissed as withdrawn. However, the parties shall be bound by the statement made today in the Court. Copy of this order alongwith trial court record be sent back and appeal file be consigned to record them.”

Wife filed fresh suit for declaration claiming that she is entitled to half share of the retiral benefits which husband is going to get at the time of the retirement. On careful reading of the plaint, it is apparent that there is no allegation that the settlement arrived at between the parties in the previous litigation has been violated. Husband filed an application before the trial Court for dismissal of the suit on the ground that as per the settlement arrive at, subsequent suit is not maintainable. Learned trial Court has dismissed the application on the ground that the previously instituted suit was only with respect to a house and maintenance. This order has been challenged in the present revision petition.

This Court has heard learned counsel for the parties at length.

It is not in dispute that previous settlement arrived at between the parties is being honoured by the husband. It is crystal clear from the statement of wife recorded in the Court on 13.08.2013 that she would not claim any property from the husband apart from the house and ₹ 5000/- per month as a maintenance. Retiral benefits as payable to the husband are also

part of property. Once the plaintiff-respondent has relinquished her rights in lieu of the residential house and maintenance as fixed by the Court, therefore, learned trial Court has committed an error in refusing to reject the suit filed by the plaintiff.

In view of the above, the order under challenge is set aside. The suit filed by the plaintiff shall stand dismissed.

Hence, the revision petition is allowed. It would be significant to mention that the wife has already filed a separate petition under Section 25 of Hindu Adoption and Maintenance Act for alteration/enhancement of the maintenance.

Revision allowed.

31.05.2018

Harish Kumar

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No