

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 179 of 2015

Mukhtar Singh S/o. Karam Singh, Aged about 40 years, R/o. Sector-6, Street No. 65, 31D Bhilai, Tahsil and Police Station Bhilai, Civil and Revenue District Durg (C.G.) ----- **Appellant**

Versus

Rajendra Kaur W/o. Mukhtar Singh, Aged about 37 years, R/o. Village Kurud, Dhancha Bhawan House No. 558, Kohka Bhilai, Tahsil and District Durg (C.G.) through Principal Nalanda Higher Secondary School (English Medium) Housing Board, Durg, Bhilai, Tahsil and District Durg (C.G.)

----- **Respondent**

For the Appellant :- Appellant in person.
For the Respondent :- Mr. B.P. Singh, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Judgement on Board By
Manindra Mohan Shrivastava, J.

29.07.2019

1. This appeal is directed against the impugned judgment and decree dated 28.10.2015 passed by the 3rd Additional Principal Judge, Family Court Durg, District Durg in Civil Suit no. 125-A/2014 to the extent that the learned Family Court has ordered to make payment of Rs. 15,00,000/- as permanent alimony to the respondent/wife.

2. The appellant filed an application under Section 13 of the Hindu Marriage Act, seeking decree of divorce against the respondent/wife on the allegation that the respondent/wife has subjected the appellant to cruelty. The respondent opposed the prayer and according to respondent, no such cruelty was committed by her. It was also the case of the appellant that in the past, the respondent had accepted a handsome amount of Rs. 3,00,000/- under an agreement dated 08.01.2002 and in that agreement, she had waived all her rights to seek any other mandatory relief against the appellant/husband. Learned family Court framed as many as 10 issues. The findings with regard to cruelty was found proved by the learned family Court, however, the family court found that the respondent has not received Rs. 3,00,000/- under an agreement Ex.P-16 dated 08.01.2002. In the result, learned family Court awarded decree of divorce in favour of respondent/wife and at the same time, passed an order for payment of Rs. 15,00,000/- as permanent alimony.
3. By this appeal, the appellant has confined his challenge only to that part by which Rs. 15,00,000/- was awarded in favour of respondent/wife.
4. The appellant, present in person, has submitted before us that the finding of learned family Court regarding payment of Rs. 3,00,000/- to the respondent/wife under agreement dated 08.01.2002 Ex.P-16 is perverse and patently illegal, in as much as, the agreement has been duly proved by the appellant not only by examining himself as plaintiff witness but an

independent witness namely Gopal (PW-2) has proved that there was a settlement arrived at between the appellant and wife/respondent which was reduced in writing vide Ex.P-16 on 08.01.2002. He also deposed that respondent/wife received Rs. 3,00,000 and waived all her rights in future to seek any claim against the appellant. Next submission is that learned Family Court has committed an illegality in not relying upon the report of handwriting expert filed by the appellant which was obtained by him by submitting the copies of the agreement and other specimen signature of the respondent, on which, opinion was given that the signature appearing in the photocopy of the agreement and other documents are one and the same. Next submission is that even if it is assumed that the appellant failed to prove that he had paid Rs. 3,00,000/- to his wife/respondent, an order awarding permanent alimony to the extent of Rs. 15,00,000/- is highly exaggerated and disproportionate. He would submit that the appellant's earning capacity has not been assessed by the learned family Court and without there being any specific material on record and also without making any enquiry with regard to the financial status and capacity of the respondent to earn her own livelihood, the appellant has been saddled with huge amount of Rs. 15,00,000/-.

5. On the other hand, learned counsel for the respondent would oppose the prayer and submit that the Court below, on bare comparison of the signature which appeared in the agreement Ex.P-16, compared with all other document on record, recorded

a finding that the signature did not match and therefore, the Court did not consider it necessary to seek opinion of any expert. It is next submitted that the handwriting expert's report is sought to be relied upon by the appellant, is self serving document and not prepared on the basis of any authentic specimen signature of the appellant. He would next submit that the appellant witness Gopal PW-2 has failed to prove the contents of the documents and if his evidence is seen, he talks about different amounts, different dates and different beneficiaries of the agreement which renders the agreement extremely doubtful.

6. It is also argued that as far as an award of Rs. 15,00,000/- is concerned, that does not appear to be on the higher side because there is no evidence led by the appellant to prove that the respondent was earning or that she had sufficient financial resources to maintain herself. Looking to the age of the respondent/wife that she is aged about 37 years, and that the appellant is a well earning man, has passed the order which does not warrant any interference.
7. We have heard learned counsel for the parties and perused the record.
8. As far as the argument that the appellant proved agreement Ex.P-16 is concerned, we find that learned Family Court has meticulously examined the evidence in this regard. The Court below itself compared the signature found on the document

Ex.P-16, authenticated signature of the respondent/wife in various parts of the record before the Court and has recorded clear finding that both are entirely different. The Court below did not give much weightage to the report of handwriting expert as it was not obtained under the order of the Court. Moreover, we have gone through the evidence of PW-2- Gopal. The evidence of this witness is self contradictory to what he has stated in the affidavit filed under Order 18 Rule 4 CPC and what has been elicited in his cross examination. Though, in the affidavit under Order 18 Rule 4 CPC, it talks about payment of Rs.3,00,000/-, in the cross examination, this witness does not talk of that amount but states regarding payment of Rs. 60,000/- as having been paid in the year 2001, and he stated that this amount was given to Rajindar Kaur. Thus, the amount which is said to be paid under agreement dated 08.01.2002 to the beneficiary and the date on which it was paid, all have been differently stated in the cross examination.

9. We find that earlier the appellant had filed a suit for recovery of Rs. 60,000/- which was registered as Civil Suit No. 15-B/2009. In that case, vide judgment and decree dated 31.01.2010 (Ex.D-4), the learned family Court found that the plaintiff failed to prove agreement dated 08.01.2002 and it was found to be a doubtful document. Therefore, the findings of the learned Court below that the agreement Ex.P-1 (Ex.P-16) is doubtful and cannot be said to be proved, does not warrant any interference.

10. As far as amount of Rs. 15,00,000/- as ordered by learned Family Court towards payment of permanent alimony as one time measure to respondent/wife is concerned, we find that learned Family Court has taken into consideration that the appellant is employed and is getting about Rs. 40,000 to 50,000 per month. Before this Court also, the appellant could not satisfy with reference to any material on record that the appellant has any liability to maintain any minor or old aged parents. It is admitted position on record that the appellant had no issue from the respondent/wife. Taking into considering the aforesaid fact, the order of the learned family Court directing payment of Rs. 15,00,000/- cannot be said to be suffering from any patent illegality or perversity.

11. We, however, are inclined to ease the appellant's liability towards payment of Rs. 15,00,000/- in favour of respondent/wife, considering that Rs. 15,00,000/- has been ordered to the appellant to be paid. The impugned judgment and decree is modified only to the extent that the amount of Rs. 15,00,000/- shall be payable by the appellant/husband to the respondent/wife in three equal installments over a period of three years. The first installment would become due for payment by the appellant by 1st August 2020, the second installment to be paid by the appellant by 1st August 2021 and the third installment to be paid by the appellant by 1st August 2022.

12. The appeal is accordingly partly allowed only in the manner and to the extent of the modification as ordered above. Parties shall bear their respective costs. Let appellate decree be accordingly drawn.

Sd/-

Manindra Mohan Shrivastava
Judge

Sd/-

Vimla Singh Kapoor
Judge