

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 133 OF 2018

Mr. Kunal Subhash MahadikApplicant

V/s.

Mrs. Prachi Kunal MahadikRespondent

Mr. Vivek Salunkhe a/w. Mr. Abhishek Deshmukh and Ms. Roshni M. Thakkar i/by. The Juris Partners, Advocate for the applicant.

Mr. Shreyas Adyanthaya a/w. Mr. Ashutosh Gavnekar, Advocate for the respondent.

CORAM : SANDEEP K. SHINDE, J.

Monday, 8th April, 2019.

ORAL ORDER :

1. *Heard learned Counsel for the parties.*
2. *It is an application under Section 24 of the Civil Procedure Code, 1908 by the husband, seeking transfer of*

Petition No.1152 of 2017 from the Family Court, Pune to Family Court, Bandra, Mumbai, filed by the respondent-wife for dissolution of marriage.

3. *The husband is seeking transfer of the subject petition in the peculiar facts of the case at hand, which are as under :*

. Marriage of the applicant and respondent was solemnised in May, 2014 at Pune. Their temperament seldom matched and therefore Petition No. 195 of 2016 was filed by the applicant and the respondent before the Family Court, Pune for dissolution of marriage by mutual consent under Section 13B of the Hindu Marriage Act. On 10th March, 2016 respondent-wife had filed an Affidavit and stated thus;

“that applicants no.1 and 2 (husband and wife) are living separately since January, 2015. They tried to reconcile the differences. However, all the efforts failed and therefore applicants no.1 and 2

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decided to dissolve the marriage by mutual consent. That, neither the husband owes anything to the wife nor wife owes anything to husband and the wife has received all ornaments, clothes etc. from her husband."

. *Precisely, it is stated in para-6 in Marathi*

“अर्जदार नं. १ व २ याने अर्जदार नं. २ हिस त्याने लग्नात दिलेले दाग दागिने कपडेलत्ते वगैरे परत दिलेले आहे.”

4 . *In para-7 of the Affidavit, the wife has given up her right to claim maintenance permanently.*

5. *The respondent-wife is working as a Freelancing Visualiser, Illustrator and Branding Freelance. Thus, she is well-qualified.*

6. *Wife withdrew her consent unilaterally only on the ground that husband had not paid compensation nor returned her streedhan. The learned Judge, thus dismissed Petition No. 195 of 2016 on 19th July, 2016 which was filed for*

divorce by mutual consent.

7. *The order dated 19th July, 2016 was challenged before this Court by way of Family Court Appeal No.169 of 2016. The Division Bench of this Court was pleased to quash and set aside the order dated 19th July, 2016 and directed the learned Judge, Family Court to pass appropriate order on the petition in accordance with law.*

8. *The learned Judge, Family Court thus after hearing the husband and wife dismissed the petition vide order dated 3rd June, 2017. The learned Judge in para-3 has observed thus :*

“3. It was argued that in petition she had waived her right and now she is taking 'U' turn. Indeed her application is totally silent about her claim of Rs.40 lakh but considering the limited scope of enquiry of Section 13B of The Hindu Marriage Act, 1955, this Court does not feel it necessary to give a finding whether the

reason mentioned in the withdrawal application is justified or not. Since petitioner No.2 has withdraw her consent, the only option left with this Court is to dismiss the petition.”

9. *The respondent-wife soon thereafter filed the subject petition on 11th July, 2017 for dissolution of marriage. The applicant-husband had also filed petition for restitution of conjugal rights in the Family Court at Mumbai.*

10. *It appears, that the learned Family Court, Pune granted interim maintenance to the respondent-wife vide order dated 7th June, 2018. It is informed that, this order is challenged by the applicant-husband, however, he has not paid arrears of maintenance to the extent of Rs.1,40,000/-.*

11. *The learned Counsel for the applicant would submit that, while exercising jurisdiction under Section 24 of the Civil Procedure Code, the conduct of the parties is the*

relevant factor. He would submit that, the respondent-wife on oath had admitted that, she has received streedhan, clothes and husband owes nothing to her. In these circumstances, her withdrawal of the consent was uncalled for. He would also submit that the affidavit was sworn before the Deputy Registrar, Family Court, Pune and being a literate woman, the withdrawal of the consent on the ground that the husband did not pay compensation and give her streedhan was clearly an afterthought. He would further submit that, she has filed the subject petition for divorce on the ground of desertion and cruelty. It is therefore submitted that, the conduct of the respondent cannot be overlooked while exercising the jurisdiction under Section 24 Civil Procedure Code.

12. The learned Counsel for the applicant, has relied on the judgments of the Punjab and Haryana High Court in the case of **Gurjeet Bajaj Versus. Rishi Dua** (T.A. No.

29 of 2012) dated 23rd February, 2012 and the order of the Supreme Court in the case of *Preeti Sharma V/s. Manjit Sharma (Transfer Petition (Civil) No.117-118/2004)* dated 29th April, 2005.

. So far as the first judgment is concerned, the learned Judge refused to transfer the proceedings at the instance of the wife because the trial was at the fag end and the wife had shifted to some other place during the pendency of the trial. Therefore, this judgment is of no assistance to the applicant.

. The next is the order of the Apex Court. It is observed therein that “Merely because the petitioner is a lady, does not mean she cannot travel to Mujafarnagar. At the highest, she can be paid expenses for travel and stay”.

. On the other hand, the learned Counsel for the respondent-wife would submit that the right to claim maintenance cannot be foreclosed as it is opposed to the

public policy. He relied on the judgment of this Court in the case of **Ramchandra Laxman Kamble v. Shobha Ramchandra Kamble and Anr.** reported in 2018 SCC Bom 7039. In this case, the husband and wife had filed a consent purshis and not only agreed to dissolve the marriage but agreed not to claim maintenance from each other. Based on such purshis, the Civil Judge Senior Division, Sangli made a decree for divorce by incorporating the agreement arrived at between the parties in terms of the purshis submitted before the Lok-Adalat. In the facts of the case, the learned Judge of this Court has observed in para-12 thus :-

“12. The consent decree made by the courts are in effect of nothing but contracts with the seal of the court super-added to them. Accordingly, if the term of the contract is itself opposed to public policy then, such term,

is void and unenforceable. If the term is severable then, only the term can be declared as void. If the term is not severable, then, perhaps, the entire contract may fall.”

13. *It is a settled law that, if the terms of contract is itself opposed to public policy then such term is void and unenforceable. Thus, an agreement under which the wife gives up or relinquishes the right to claim maintenance at any time in future, is opposed to public policy and therefore such an agreement, even if voluntarily entered into, is not enforceable.*

14. *In the case on hand, the facts are different. Herein, the parties are living apart since January, 2015. In March, 2016 they had filed the petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act. In the said petition, the wife had filed an Affidavit and admitted that, she had received the Streedhan, clothes*

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etc. from the husband. She would state in the affidavit

that, she has no claim of whatsoever against the husband.

This Affidavit was sworn on 16th March, 2016. However,

four months later, she withdrew the consent unilaterally

and informed the learned Judge that, she had neither

received the compensation nor the streedhan from the

husband. Prima-facie, the reasons for withdrawal of the

consent are contrary to affidavit dated 16th March, 2016;

para-6 thereof. No doubt, she has a right to claim

maintenance and nobody can dispute it, however, in the

case on hand, what is required to be seen and appreciated

is the conduct of the respondent-wife. It is submitted by the

learned Counsel for the respondent that, she had not

engaged a lawyer but the Affidavit was drafted by a lawyer

who was engaged by the husband. The Counsel would

further submit that, she was not explained and/or

interpreted the contents of the Affidavit and even otherwise

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it was agreed, husband shall pay the compensation within a reasonable period. It cannot be ignored that the wife is well educated and therefore the contention that she was not made to understand the contents of her Affidavit cannot be accepted. In the Affidavit, she would state that their temperaments seldom matched and therefore they had decided to separate by mutual consent, however, the subject petition is filed for dissolution of marriage on the ground of cruelty and desertion which apparently is absent in the affidavit sworn by her on 16th March, 2016.

15. *I am conscious that while exercising jurisdiction under Section 24, I am not required to address on the merits of the matter. I am referring to the facts and the orders passed in the proceedings between the applicant and the respondent, just to highlight the conduct of the respondent-wife and nothing more.*

16. *Thus, taking into consideration the facts of the*

case and particularly the contents of the affidavit dated 16th March, 2016 and the reasons for withdrawal of the consent and again instituting the suit for dissolution of marriage on the ground of desertion and cruelty, the conduct of the respondent cannot be overlooked. It is informed that after the marriage, the couple was residing at Mumbai. The respondent is a well educated lady. Husband has filed petition for restitution of conjugal rights in Mumbai and good means of conveyance is available between Pune and Mumbai.

17. *Thus, considering the facts of the case and conduct of the respondent-wife, I am inclined to transfer the Marriage Petition No. 1152 of 2017 filed by the wife in the Family Court, Pune to the Family Court at Mumbai.*

18. *It is informed that, the applicant is in arrears of maintenance of Rs.1,40,000/-. Though, husband has challenged the order passed by the learned Family Judge, he*

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is directed to pay Rs.1,00,000/- to the respondent-wife within three weeks from today and shall continue to pay the maintenance till such order is modified or varied in the Appeal preferred by the applicant-husband. In addition thereto, the applicant shall pay Rs.2,000/- to the respondent-wife, as and when, she would attend the proceedings in the Family Court.

19. *That subject to payment of Rs.1,00,000/- towards the arrears of maintenance to the wife within three weeks and subject to Undertaking that he shall pay the maintenance of Rs.7,000/- per month to the wife and shall pay Rs.2,000/- towards the travelling expenses for each trip to the Family Court, the application is allowed in terms of prayer clause (a).*

20. *I therefore pass the following order :*

(i) The learned Judge, Family Court, Pune is requested to transfer the papers and proceedings

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*of Marriage Petition No. 1152 of 2017 filed by the
wife to the Family Court at Mumbai.*

*(ii) The parties, as well as the, learned Judge,
Pune to act on authenticated copy of this order.*

*(iii) Both the parties are directed to appear before
the learned Family Court at Bandra on 10th June,
2019 at 11.00 a.m.*

*(iv) The Miscellaneous Application is allowed in
the aforesaid terms. No orders as to costs.*

(SANDEEP K. SHINDE, J)