

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

CRR(F) No.141 of 2014 (O&M)
Decided on:- March 03, 2020.

Raj Karan Yadav.

.....Petitioner.

Versus

Neeta Yadav.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. A.P. Jain, Advocate
for the petitioner.

Mr. Balram Prashar, Advocate
for the respondent.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present criminal revision against the judgment dated 05.04.2014 passed by learned District Judge, Family Court, Gurgaon, whereby the petition under Section 125 Cr.P.C. filed by the respondent-wife against the petitioner-husband was allowed and the petitioner-husband was directed to pay a sum of Rs.8,000/- per month to the respondent-wife w.e.f. the date of petition i.e. 21.07.2012.

Briefly stated, the marriage between the parties was solemnised on March 07, 1991 and out of this marriage, two sons were born. It being a matrimonial dispute between the husband and wife, this Court vide order dated 01.08.2014 referred the matter to the Mediation and Conciliation Centre of this Court and the parties were directed to appear there on 03.11.2014. The petitioner-husband was also directed to pay a sum of Rs.15,000/- as litigation expenses to the respondent-wife. Thereafter, the matter was dealt with by the

Mediator and a settlement/agreement dated 09.03.2018 was entered between the parties signed by them alongwith their respective lawyers. The terms of settlement as mentioned in paragraph No.7 of the settlement/agreement dated 09.03.2018 read as under:

“7. The following settlement has been arrived at between the Parties hereto:

- (i) It has been agreed between the parties that the first party/husband-Raj Karan Yadav shall pay an amount of Rs.6,00,000/- (Rupees Six Lacs only) to the second party/wife-Neeta Yadav as permanent alimony and maintenance (past, present and future) for the second party. It has been further agreed between the parties that the amount of Rs.6,00,000/- (Rupees Six Lacs only) will be paid by the first party/husband in the form of bank draft to the second party/wife on or before 09.05.2018.*
- (ii) It has also agreed between the parties that a Flat No.63, Second Floor, HBC 33-48, Gurugram purchased by the first party/husband on GPA shall be bound to hand over all the documents of the flat and the peaceful possession to the second party/wife before the Court of Ld. Addl. District/Sessions Judge, Gurugram on the date fixed i.e. 05.04.2018. The ownership and title of the above-said flat shall be transferred in the name of the second party as per Housing Board Rules and Regulations. The first party shall pay all the balance instalments due to the Housing Board with regard to the above-said flat.*
- (iii) It has also been agreed between the parties that the household goods and articles of the second party/wife lying at H.No.231, First Floor, Indira Colony No.2, Sector*

52, Gurugram shall be handed over by the first party to the second party on or before 09.05.2018.

(iv) It has further agreed between the parties that the second party shall withdraw the FAO No.5391 of 2016 pending before the Hon'ble High Court and accept the decree of divorce passed by the Court of Ms. Ritu Y.K. Behl, District Judge, Family Court, Gurgaon vide judgment and decree dated 20.08.2016.

(v) Both the parties have mutually agreed to withdraw their respective cases as mentioned in para No.6 above on or before 09.05.2018.

Any other complaint/case filed by either of the parties before any court of law or any authority shall also be withdrawn in view of this Settlement/Agreement by the respective party.”

Learned counsel for the petitioner has argued that in view of the aforesaid settlement so arrived between the parties, the petitioner has offered a sum of Rs.6 lakh along with Flat No.63, Second Floor, HBC 33-48, Gurugram, which has been purchased by the petitioner as G.P.A.

He has further submitted that as per the terms of allotment, the aforementioned flat cannot be transferred for a period of six years. However, in order to protect the interest of the respondent, the petitioner is ready to furnish an indemnity bond for the transfer of said flat on completion of the lock-in period. The petitioner undertakes to transfer the flat in the name of the respondent. However, the said flat is fit for human habitation as all facilities like electricity, water etc. are available there. There are other people who are staying in the locality where the flat is located. He has produced the

photographs of the area so as to substantiate his argument that the flat is habitable and the other flats developed by M/s Unitech Company have been allotted to other people and they are residing there without any complaint. The photographs are taken on record.

He has further submitted that though as per the terms of settlement, the petitioner was required to pay a sum of Rs.6 lakh to the respondent, but the petitioner is still ready to add a sum of Rs.1 lakh more to the already settled amount and in this manner, the petitioner is ready to pay a sum of Rs.7 lakh to the respondent instead of agreed amount of Rs.6 lakh. Even otherwise, two sons born out of the wedlock are staying with the petitioner as the respondent is a quarrelsome lady.

Learned counsel for the respondent, on instructions from the respondent, who is present in Court, states that the house which is being given to the respondent is not in habitable condition. Moreover, the aforesaid flat cannot be transferred in the name of the respondent and, therefore, handing over the possession of the flat is an illusory one. The respondent be allowed to stay in the house as referred in paragraph No.7(iii) of the settlement dated 09.03.2018 i.e. House No.231, First Floor, Indira Colony No.2, Sector 52, Gurugram.

I have heard learned counsel for the parties.

Hon'ble Supreme Court in the case of ***Mr. Vikram Bakshi and others Versus Ms. Sonia Khosla (Dead) By Lrs. 2014(15) SCC 80*** has elaborately explained the advantages of mediation process of settling the

disputes. The relevant observations of Hon'ble Supreme Court as mentioned in paragraphs No.17 and 18 of the said judgment read as under:

“17. There is always a difference between winning a case and seeking a solution. Via mediation, the parties will become partners in the solution rather than partners in problems. The beauty of settlement through mediation is that it may bring about a solution which may not only be to the satisfaction of the parties and, therefore, create a win win situation, the outcome which cannot be achieved by means of judicial adjudication. Thus, life as well as relationship goes on with Mediation for all the parties concerned and thus resulting into peace and harmony in the society. While providing satisfaction to the litigants, it also solves the problem of delay in our system and further contributes towards economic, commercial and financial growth and development of the country.

18. This Bench is of firm opinion that mediation is new dimension of access to justice. As it is one of the best forms, if not the best, of conflict resolution. The concept of Justice in mediation is advanced in the oeuvres of Professors Stulberg, Love, Hyman, and Menkel-Meadow (Self-Determination Theorists). Their definition of justice is drawn primarily from the exercise of party self-determination. They are hopeful about the magic that can occur when people open up honestly and empathetically about their needs and fears in uninhibited private discussion. And, as thinkers, these jurists are optimistic that the magnanimity of the human spirit can conquer structural imbalances and resource constraints.”

Similarly, while relying upon the aforesaid judgment of Hon'ble Supreme Court, the Division Bench of Hon'ble High Court of Kerala in ***Teena M. Ansari Versus Rinoj Eappen 2019(4) CivCC 323 (DB)*** has held

that when the parties settled their disputes by signing an agreement, detailing the procedures to be followed to work out such settlement, certainly, that agreement is having all the characteristics of compromise and no party can withdraw from it unilaterally. The relevant observations as mentioned in paragraph No.12 of the said judgment read as under:

“12. After entering into a settlement through the process of mediation and after the court as well as the parties have acted upon the settlement, one of the parties cannot be permitted to unilaterally withdraw from the same. Granting permission for withdrawing from the settlement agreement, which was voluntarily signed by the parties, would destroy the sanctity of the whole process of mediation. The settlement agreement, having been signed and acted upon, is binding on the parties. A settlement agreement entered into between the parties through mediation conducted at the High Court Mediation Centre, after getting the imprimatur of the court, has got a certain solemnity attached to it.”

The ambit of the present litigation is otherwise very limited as the respondent was awarded maintenance @ Rs.8,000/- per month, but still in order to protect the interest of the respondent, this Court, while passing the order dated 01.08.2014 had referred the matter to the Mediation and Conciliation Centre of this Court and it is thereafter, the matter was settled between the parties before the Mediator vide settlement/agreement dated 09.03.2018. Thereafter, on May 08, 2018, this Court had passed the following order:

“This court is informed that in terms of the compromise arrived at between the parties Flat No.63, Second Floor, HUDA

Housing Board Colony, adjoining Unitech Building, Sector 33, Gurugram, is to be handed over to the respondent as well as ownership and title of the same.

Learned counsel for the petitioner informs that as of date water supply is not reaching the said colony, on account of filter system to be supplied by Unitech. The process of supplying electricity to the said flat is under process.

The respondent, who is present in the court today along with her counsel, submits that this area is not habitable.

At this stage, Mr. P.P. Chahar, learned DAG Haryana, who is present in the court is requested to use his good offices to verify whether the said flat is in a habitable condition, while keeping in mind that electricity and water supply is yet to be supplied. He is also requested to verify how long it would take for the said flats to be made habitable in terms of supply of electricity and water.

Adjourned to 17.07.2018.

In the meantime, the respondent herein is permitted to continue to reside in the premises where she is currently residing till such time the aforesaid flat is made habitable, transferred to her and possession handed over.”

Pursuant to the settlement/agreement dated 09.03.2018, the petitioner has offered the Flat No.63, Second Floor, HBC 33-48, Gurugram along with a sum of Rs.6 lakh to the respondent and has produced a cheque for an amount of Rs.6 lakh in favour of the respondent, but the same is not being accepted by the respondent, who is otherwise present in Court. She has also declined to accept the cheque amount of Rs.6 lakh in terms of the settlement/agreement dated 09.03.2018 and is not inclined to vacate the

premises in her possession i.e. House No.231, First Floor, Indira Colony No.2, Sector 52, Gurugram.

Admittedly, there are two sons born out of the wedlock, who are staying with the petitioner and out of them, one son is present in the Court as well. This Court has interacted with him, who has also supported the case of the petitioner and, rather, submitted that it is the respondent, who is not cooperating in the family affairs. Considering the attitude of the respondent, this Court finds that this Court has no option except to direct the respondent to vacate the premises, which is otherwise in her possession. However, she would be at liberty to shift to the alternative accommodation being offered by the petitioner in terms of the settlement/agreement dated 09.03.2018 for which the petitioner shall provide all facilities including electricity and water charges and other allied amenities which are otherwise required to be attached with the flat in question. The charges of such amenities shall be paid by the respondent as she has already been provided with permanent alimony and maintenance past present and future, as detailed in paragraph No.7(i) of the compromise. The compromise has been arrived between the parties before the Mediation and Conciliation Centre of this Court after due deliberations/meetings in the presence of the parties.

The Court cannot be a silent spectator to the lis, particularly when the respondent has attended the mediation and after due deliberations had signed the compromise alongwith their respective lawyers. A perusal of the paper book reveals that the matter was referred to the mediation vide order dated 01.08.2014 and the matter is pending since then. Now the respondent is

not adhering to the settlement dated 09.03.2018. This infers the intention of the respondent, who despite the settlement having been arrived at between the parties, has neither disputed nor challenged the compromise in any proceedings. Rather, she is withdrawing from the compromise at this stage, unilaterally which law does not permit.

In view of *Vikram Bakshi and others' case (supra)* and *Teena M. Ansari's case (supra)*, since the respondent is signatory to the settlement/agreement dated 09.03.2018 and the petitioner has shown his readiness to comply with the terms and conditions of the settlement, but the respondent is now backing out from such settlement, she cannot be extended any other relief. However, in case of violation of any term and condition of the settlement/agreement dated 09.03.2018 on the part of the petitioner, the respondent would be at liberty to get the same implemented in accordance with law.

Accordingly, the respondent is directed to hand over the vacant possession of the house in her possession to the petitioner within six months from the date of receipt of certified copy of this order. She would be at liberty to take possession of Flat No.63, Second Floor, HBC 33-48, Gurgaon and the petitioner shall facilitate to deliver possession of the Flat. This extraordinary time of six months is granted to the respondent enabling her either to shift the accommodation provided to her in the light of settlement/agreement dated 09.03.2018 arrived before the Mediation and Conciliation Centre of this Court or to make any other alternative arrangement.

It is made clear that as the petitioner himself has offered a sum of Rs.7 lakh to the respondent, though agreed amount as per the settlement is Rs.6 lakh, therefore, in case the respondent approaches the family Court by moving an appropriate application to claim the said amount, the petitioner shall be bound to pay the amount of Rs.7 lakh to the respondent-wife in terms of settlement arrived between the parties. However, her claim for release of amount of Rs.7 Lakhs shall be entertained by the Courts below only after handing over the possession of the portion of house already in her possession.

Disposed of.

March 03, 2020

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No