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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 30.11.2023

+ **MAT.APP.(F.C.) 5/2021 & CM APPL. 43958/2022**

ZEENY JHELUMI

..... Appellant

Versus

INDERPREET SINGH JHELUMI

..... Respondent

Advocates who appeared in this case:

For the Appellant:	Mr. P. S. Patwalia, Sr. Adv. with Ms. Natasha Dalmia, Mr. Gauravjit Singh Patwalia and Ms. Anisha Jain, Advs.
For the Respondent:	Ms. Pinky Anand, Sr. Advocate with Ms. S. Sharma, Ms. Asees Jasmine Kaur and Mr. Aadarsh Kothari, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

1. The challenge in the present appeal is to the order dated 14.07.2020 passed in Civil Suit No. 05/2018, whereby the learned Principal Judge, Family Courts (South), Saket, Delhi has allowed the application of the respondent-husband under Order VI Rule 17 CPC seeking amendment of the written statement filed by him.
2. The brief facts giving arise to the present appeal are that the marriage between the appellant-wife and respondent-husband was solemnised on



24.10.1999. Out of the said wedlock, two children were born, who are presently in the care and the custody of the appellant-wife. On account of temperamental differences, certain disputes arose between the parties relating to day to day living affairs, financial expenses, upbringing of the children etc., and to resolve the said disputes, the parties executed a Memorandum of Family Settlement dated 30.05.2017, whereby the terms of Oral Family Settlement, which was previously entered into by the parties on 05.05.2017, were recorded. Thereafter, a Conciliation and Settlement Agreement dated 02.06.2017 was also executed between the parties before the Delhi High Court Mediation and Conciliation Centre.

3. The appellant filed a civil suit *inter alia* alleging that the respondent has breached the terms of Conciliation and Settlement Agreement dated 02.06.2017 and the Family Settlement dated 30.05.2017 and the addendum thereto dated 13.07.2017 (hereinafter jointly referred to as “settlements”). In the said suit prayer was, *inter-alia*, made for injunction, custody, maintenance and for specific performance of the Memorandum of Family Settlement dated 30.05.2017 and Conciliation and Settlement Agreement dated 02.06.2017.

4. Two paragraphs of the plaint viz., paras 2.56 and 2.58 in which the averments have been made with regard to the settlements having been executed between the parties and the relevant terms and conditions thereof agreed between them, which are relevant for the purpose deciding the controversy involved in the present appeal, reads as under:

“...2.56 The Wife and the Husband thereafter on 30.05.2017 entered into a Memorandum Recording the Oral Family Settlement dated



2.05.2017 in writing. The said Family Settlement was duly signed by the parties and thereafter notarized. A true copy of the Memorandum recording the Family Settlement along with the addendum is enclosed herein and marked as Annexure P-22 (Colly).

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2.58 That Conciliation sessions were held between the parties and the Conciliator on 30.05.2017 and 2.06.2017, and in pursuance thereof, a Conciliated and Settlement Agreement was executed between the parties voluntarily before the Delhi High Court Mediation Centre on 02.06.2017. The salient and relevant terms and conditions agreed between the parties as per the Settlement Agreement are inter alia as under:

(a) The Husband agreed to provide an unconditional access to a sum of Rs. 6,25,000/- per month to the Wife in her separate personal account.

(b) The Husband agreed to execute a registered gift deed or transfer by any other legal mode an area of 1 Acre out of a total of 4 Acres in matrimonial home 12, South Drive, Chattarpur Farms New Delhi and entitled to absolute use and occupation of another 1 acre i.e 12A, South Drive, DLF Chattarpur Farms, New Delhi - 110074, It was further agreed that the 2 Acres in the share of the Wife would be as per the Site Plan enclosed with the Conciliation Agreement and would include the area of 1 Acre being 12A, South Drive, DLF Chattarpur Farms New Delhi and 1 (Acre) in the north West side of 12, South Drive, DLF Chattarpur Farms where the library and mango grove is located.

(c) The Husband agreed that the rent agreements with the tenants of 12A, South Drive, DLF Chattarpur Farms, New Delhi 110074 and N-94 Panchsheel Park, New Delhi would be modified and the name of the Wife would be inserted in place of the Husband as Landlord and furthermore, that the Wife would be absolutely entitled to collect the rent from the said premises.

(d) The Husband agreed not to use any derogatory or defamatory language against the Wife in social media, email



and messages containing character assassination of the Wife or anything that damages the reputation of the Wife.

(e) The Husband agreed not to damage the library of the Wife.

(f) The Husband agreed not to take any loans, advances against his immovable and movable properties and further restrain himself from making unwarranted and unnecessary purchases.

(g) The Husband agreed to continue his treatment with Dr. Samir Parekh, Psychiatrist in Fortis Hospital and further agreed not to consume any medicinal drugs other than those prescribed specifically by his doctor.

(h) The Husband agreed to dispose of all dangerous items like electric Chain saw, electric drills, air gun, blades that were in his possession and further promised not to possess the same in future.

(i) The Wife agreed to join the Husband in the matrimonial home w.e.f 15th June, 2017 without condoning or accepting his past conduct and behaviour and without prejudice to her legal rights.”...

5. On being served with the summons in the aforesaid suit, the respondent-husband appeared in person before the Family Court with his father Sh. R.S. Jhelumi and his counsel in the suit on 20.03.2018.

6. On the said date, the parties, who were present before the learned Trial Court, principally agreed that they shall remain bound by the terms of the Settlement arrived at between them before the Delhi High Court Mediation and Conciliation Centre on 02.06.2017. The parties further agreed that in terms of para 2 of the Settlement dated 02.06.2017, the appellant shall keep getting the rent which amounts to Rs.2.5 lacs.

7. Sequel to above, the respondent also filed the written statement in the aforesaid suit. The averments made in paras 2.56 and 2.58 of the plaint were admitted by the respondent in his written statement as a matter of record, in



the following terms:-

“...2.56. That the memorandum recording the family settlement is matter of record and merit no response.

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2.58 That the contents of para 2.58 is a matter of record and merit no response.”....

8. Against the aforesaid order dated 20.03.2018, where the parties had principally agreed to remain bound by the terms of the settlements, the wife preferred an appeal *vide* FAO No. 260/2018. In the said FAO, an order dated 31.05.2018 was passed, wherefrom it is evident that the respondent had not disputed the said settlements or terms thereof, rather, the learned Senior Counsel for the respondent had articulated the following submissions premised on para 1 of the Settlement Agreement dated 02.02.2017:

*“2. Mr. Khurshid, the learned Senior Advocate for the respondent states, at the outset, that as a concerned father, the respondent would like to make due provisions for the children not only for their physical needs but also for their emotional and psychological well being; that he would like to meet them and possibly interact with them regularly. The learned Senior Advocate submits that the father's interaction with the children merely once a week may not necessarily be in the interest of development of their emotional quotient; therefore, the father would like that the children are accommodated on the same campus where the father is living so that the children can, at least, be seen by the father on a regular basis and if possible, there would be far more frequent interaction between them than what is envisaged in the Settlement Agreement. He submits that the children too should have unhindered access to their father. **Apropos the amounts mentioned in para 1 of the Settlement Agreement, he says that Rs.2, 70,000/- to be paid to the appellant towards "Staff Salary" and "Household Expenditure", was for maintenance of the house-hold when the***



appellant was living together with the respondent as one family unit. However, since she does not reside under the same roof, these amounts would have to be proportionately reduced by a quarter because the family consists of four persons i.e. the parents and the two children. In effect, she would receive Rs.2,02,500/- under the said account heads. The other payments would remain undisturbed. Thus, the entitled revised amount payable would be Rs. 5,57,500/- per month. In terms of the Settlement Agreement, the appellant receives Rs.35,000/- per month as rent of first floor, N-94, Panchsheel Park, New Delhi and Rs.1,35,000/- per month as use and occupation charges of property bearing no. 12A, South Drive DLF Chattarpur Farms, New Delhi 110074. So long as these amounts are being received by her, there will be a corresponding deduction from the monthly maintenance amount to be paid to her by the respondent. The amount of Rs. 3,87,500/- shall be paid to the appellant's bank account being account No. 00031000112719, HDFC Bank, K.G. Marg, New Delhi on or before the 15th day of each month. Whenever, lesser rental amount is received by the appellant, the respondent shall make good such shortfall to ensure that she receives Rs. 5,57,500/- by the 15th day of the month. In the event of default in such payment, the appellant shall be entitled for directions to get such amount released directly from the respondent's bank account.”

9. Considering the submissions of the Counsel for the respondent, an arrangement was worked out *vide* order dated 31.05.2018 to the following effect:

- (a) the respondent will pay an amount of Rs.5.57 lacs to the appellant, as evident from the above quoted paragraph of order dated 31.0.2018.
- (b) any infraction in the payment of this amount either in quantum or by the date, shall automatically be visited with costs of Rs.25,000/- which too shall be paid into the appellants bank account, within two weeks of such infraction.



(c) the respondent shall make arrangement for residence of the appellant and her two children, on the same campus where he is residing, preferably in property No.12-A, South Drive, DLF, Chhatarpur Farms, New Delhi.

10. Later on, the FAO 260/2018 was converted into MAT.APP. (F.C) 195/2018 and the same was disposed of by a Coordinate Bench of this Court vide order dated 12.11.2018 with the following observations :

*“...11. We do not find any force in the submission made by Mr. Sahay for the reasons that neither the terms of the settlement have been recalled or set aside by any Court nor the order of 31st May, 2018 has been recalled nor the statement made on behalf of the respondent can be withdrawn. In our view, leaving the objections raised by Mr. Sahay open lest it causes prejudice to him in the contempt petition, which has been instituted and in which we have issued notice today, **till the order of the 31st May, 2018 is set aside the same is to be complied with. As far as the impugned order is concerned reading of the same, no doubt, shows that it is a consent order and thus no relief can be granted to the appellant.**”*

11. The appellant also filed a contempt petition being CONT.CAS(C) 516/2018 alleging that the respondent has wilfully disobeyed and deliberately defied the order dated 31.05.2018 passed by this Court in FAO No. 260/2018. In the contempt petition, one of the submissions made on behalf of the respondent was that the settlements were created under undue influence, pressure and coercion, therefore, the same are not enforceable. However, the Court while dealing with the said submission observed that in the order dated 31.05.2018, counsel for the respondent made submissions which duly admitted the existence of the Conciliation Settlement Agreement executed on 02.06.2017. It was further observed that the learned Single Judge in his order dated 31.05.2018, on an undertaking given by the counsel



for the respondent, took the said Settlement Agreement into consideration and directed the respondent to pay the revised amount of maintenance of Rs.5,57,500/- to the petitioner. Accordingly, the Court rejected the submission of the respondent that he is incapable of complying with the Settlement Agreement dated 02.06.2017 as the same was entered into under undue, influence or coercion. The relevant paragraphs of the judgement dated 24.12.2019 reads thus:

“...38. After analysing the judgments as relied upon by both the parties, we find force in the submissions made by the petitioner and hold that in the order dated 31.05.2018, counsel for the respondent made statements which duly admitted the existence of the settlement agreement executed on 02.06.2017. The learned Single Judge, on the undertaking given by the counsel for the respondent, took the settlement agreement into consideration and directed the respondent to pay the revised amount of maintenance of Rs. 5,57,500/- to the petitioner. Therefore, the submission of the respondent that he is incapable of complying with the settlement agreement as it was entered into under undue influence and coercion, and the Single Judge did not take into consideration the settlement agreement while issuing the directions to pay the revised amount of maintenance, cannot be accepted.

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44. In view of the above discussion we hold that the order dated 31.05.2018 is neither void nor a nullity. The same has attained finality in view of the respondent having withdrawn the application for modification of the said order. The settlement agreement dated 02.06.2017 as well as the order dated 31.05.2018 is binding upon the parties.

45. In the light of the above observations, the respondent is held guilty for civil contempt as he has wilfully disobeyed the order dated 31.05.2018. Thus, the present petition is allowed.”...



12. The respondent took the challenge to the Supreme Court against the judgment dated 24.12.2019 in the contempt case, however, the same was dismissed as withdrawn. Thus, the findings of this Court recorded in judgment dated 24.12.2019 have attained finality.

13. During the pendency of the contempt petition the respondent also filed a Civil Suit No.18/2018 titled as “***Inderpreet Singh Jhelumi v. Zeeny Jhelumi***” before the Principal Judge, Family Court, seeking annulment of the Conciliation Settlement Agreement dated 02.06.2017 and the Memorandum of Family Settlement dated 30.05.2017. The said suit was, however, stayed by the learned Family Court on the ground that the suit of the wife which is prior in point of time, is pending.

14. Subsequently, the respondent filed an application Order VI Rule 17 CPC seeking amendment of the written statement filed in the appellant’s suit, whereby the respondent sought to incorporate in the written statement the circumstances which led to the execution of the two documents i.e., Memorandum of Family Settlement 30.05.2017 and Conciliation Settlement Agreement 02.06.2017, as well as, the averments that “*the said documents were created under undue influence, pressure and coercion and are therefore not enforceable.*” It was pleaded in the application that due to inadvertence and advice of the previous counsel, the facts stated in the amendment application could not be made part of the written statement.

15. The plaintiff filed reply to the application, *inter alia*, raising the objections that - (i) the application is not maintainable as the respondent is withdrawing an admission made in favour of the plaintiff in the written



statement; (ii) application is not in the correct format; and (iii) that the application does not state as to what paragraphs it seeks to amend.

16. The learned Trial Court *vide* the impugned order dated 14.07.2020, allowed the application of the respondent under Order VI Rule 17 CPC observing that the respondent by way of an amendment has not denied the admission of the execution of the documents in question but only wanted to incorporate the circumstances and the material facts leading to the execution of such documents and to elaborate the facts, issues and defence already raised by him in the written statement.

17. Mr. P.S. Patwalia, learned Senior Counsel appearing on behalf of the appellant submits that the learned Trial Court has allowed the amendment without appreciating that such amendment seeks to displace the appellant completely from the admission made in the written statement, which is not permissible under law.

18. He submits that the respondent first filed a suit seeking annulment of the settlement entered into between the parties and when the same was stayed, the respondent filed an application seeking amendment of the written statement.

19. He submits that the allegation of undue influence, pressure and coercion were not disclosed in the written statement, which was filed on 07.05.2018. The aforesaid allegations were sought to be incorporated by an amendment application filed on 02.05.2019, but during the interregnum the respondent continued to act in furtherance of the settlements.



20. He submits that the appellant in the plaint had specifically mentioned the settlement and the relevant terms thereof. The respondent filed his written statement and admitted the settlements and the terms thereof as a matter of record. Elaborating further, he submits that the respondent having categorically admitted the settlements and their terms cannot be permitted to withdraw the same to the prejudice of the appellant.

21. He submits that the application of amendment is also not in correct format, in as much as, from the application it is not clear as to what proposed pleadings are to be added, omitted or substituted in the original written statement.

22. He invites the attention of the Court to the order dated 24.12.2019 passed in Contempt Case No. 516/2018 to contend that the respondent's submission that he entered into the settlement under undue influence or coercion was not accepted by a Coordinate Bench of this Court, therefore, the respondent is estopped from raising the same plea by amending the written statement.

23. He places reliance upon the two decisions of Hon'ble Supreme Court in *Modi Spg. & Wvg Mills Co. Ltd. Vs. Ladha Ram & Co.*, (1976) 4 SCC 320 and *Heeralal vs. Kalyan Mal*, (1998) 1 SCC 278.

24. *Per contra*, Ms. Pinky Anand, learned Senior Counsel appearing on behalf of the respondent supports the impugned judgment. She submits that the respondent in the amendment application has not denied the execution of the documents in question but has only sought to incorporate the



circumstances and material facts leading to the execution of the documents in question.

25. She submits that in the written statement it has already been pleaded that the appellant in a planned manner in connivance with her father wanted to grab the properties of the respondent and hatched a conspiracy in furtherance of their illegal designs, therefore, the amendment application filed by the respondent does not add a new ground of defence but only expand and elaborate the pleas already taken by the respondent in the written statement, which is permissible under law. Reliance is placed on the decisions in *Raj Kumar Bhatia vs. Subhash Chander Bhatia* (2018) 2 SCC 87 and *B.K. Narayana Pillai vs. Parameshwaran Pillai* (2000) 1 SCC 712.

26. We have heard the learned Senior Counsel for the appellant, as well as, the learned Senior Counsel for the respondent and have perused the material on record.

27. The appellant in her suit has *inter alia* prayed for specific performance of the Memorandum of Family Settlement dated 30.05.2017 and Conciliation Settlement Agreement dated 02.06.2017. In paras 2.56 of the plaint the appellant has categorically stated that the Family Settlement dated 30.05.2017 and Conciliation Settlement Agreement dated 02.06.2017 were duly signed and executed by the parties. In para 2.58 of the plaint, the salient and relevant terms and conditions agreed between the parties in the Settlement Agreement have been enumerated. The respondent in corresponding paras of the written statement filed by him has admitted the averments made in paras 2.56 2.58 as a matter of record warranting no response.



28. A perusal of the aforesaid two settlements shows that the appellant's right in some of the respondent's movable & immovable properties as well as her right in respect of maintenance have been mutually agreed between the parties. Clearly, certain rights of the appellant flows from the said settlements and the respondent by non-traverse of two settlements and their terms, has accepted the execution, correctness and validity thereof.

29. Allowing the respondent to incorporate the challenge to the said settlements on the ground of undue influence, pressure and coercion by means of an amendment to the written statement will have the effect of permitting the respondent to raise a doubt with regard to the correctness, validity and legality of the said settlements, which already stands admitted by the respondent. Thus, the proposed amendment if permitted will defeat the right which has already accrued to the appellant on the basis of the said admission. We, therefore, don't agree with the view of the learned Principal Judge that the amendment sought by the respondent is only an elaboration of facts, issues and defence already raised by the respondent.

30. Interestingly, as noted above, the learned counsel for respondent while appearing in the FAO 260/2018 on 31.05.2018 had premised his submissions on para 1 of the settlement agreement dated 02.06.2017 and the respondent also continued to act in furtherance of the settlements for quite sometime before he stopped paying the maintenance in terms thereof and further defied the arrangement worked out in order dated 31.05.2018. Therefore, the plea predicated on the assertion that the settlements were entered into under undue influence, pressure and coercion seems to be an afterthought.



31. It is settled law that inconsistent and alternative pleas are permissible in the written statement but amendment in the written statement seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement is not permissible. Reference this regard may be had to the decision of the Hon'ble Supreme Court in *Modi Spg. & Wvg. Mills Co. Ltd. v. Ladha Ram & Co. (supra)* wherein it was held as under:

“10. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paras 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial court.”

32. Likewise, in *B.K. Narayana Pillai v. Parameswaran Pillai (supra)* the Hon'ble Supreme Court held that inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The relevant part of the decision reads thus:

*“4.The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. **The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn.** All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a*



*new cause of action on the basis of which the original lis was raised or defence taken. **Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings.** Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.”*

(emphasis supplied)

33. Again in *Heeralal v. Kalyan Mal*, (1998) 1 SCC 278, the Hon’ble Supreme Court, relying upon *Modi Spg. & Wvg. Mills Co. Ltd.* (supra) held that an inconsistent plea which would displace the plaintiff completely from the admissions made by the defendants in the written statement cannot be allowed. If such amendments are allowed in the written statement the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants.

34. The decision in *Raj Kumar Bhatia* (supra) relied upon by the respondent is not applicable to the facts of the said case as in the said case the Hon’ble Supreme Court had arrived at the conclusion that allowing the amendment sought therein would not amount to withdrawal of an admission contained in the written statement since the amendment sought to elaborate upon an existing defence, which is not the position in the present case. The decision in *B.K. Narayan Pillai* (supra) also does not advance the case of the respondent, rather it supports the case of the appellant as noted above.



35. The matter deserves to be considered from another angle. The respondent has already made exact same submissions questioning the settlements in Contempt Case No. 516/2018. This Court by an order dated 24.12.2019 passed in the said contempt case has recorded a specific finding that the submission of the respondent that he entered into the settlement under undue influence or coercion cannot be accepted. The said finding in the contempt case has attained finality as the SLP filed against the order dated 24.12.2019 was withdrawn. Therefore, the respondent is estopped from raising the same issue as it is trite law that a party against whom an issue has been decided would be estopped from raising the same issue again. Reference in this regard may be had to *Central Bank of India & Ors vs. Dragendra Singh Jadon*, (2022) 8 SCC 378 and *Bhanu Kumar Jain vs. Archana Kumar* (2005) 1 SCC 787. In this view of the matter also, amendment of the written statement ought not to have been allowed by the Trial Court.

36. In so far as the submission of the appellant that the application seeking amendment was not in the proper format is concerned, we observe that no specific format has been prescribed under Rule 17 of Order 6 CPC for the application seeking amendment, but ideally the amendments which are sought to be incorporated must clearly spell out the paragraphs or prayer to be omitted, added or substituted in the original pleading. Paragraph 4 of the application seeking amendment only contains narration of additional facts and the averments challenging the settlements as unenforceable on the ground that the same were entered into under undue influence, pressure and coercion. The application does not divulge the proposed amendments or the



paragraphs of the written statement that are sought to be omitted, added or substituted. However, the issue does not merit any further elaboration as we have considered the application on merit and held that the amendments ought not to have been allowed.

37. In view of the above discussion, the appeal is allowed and the impugned order is set aside. Consequently, the application of the respondent under Order 6 rule 17 CPC is dismissed. Parties are left to bear their own cost.

VIKAS MAHAJAN, J

SANJEEV SACHDEVA, J

NOVEMBER 30th, 2023/dss