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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 1342/2022 & CM APPL. 52957/2022, CM APPL.
15802/2023

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Reserved on: 01st June, 2023Date of Decision: 9th August 2023**ANURAG GOEL**

..... Petitioner

Through: Mr. Prabhjit Jauhar, Ms. Rosemary
Raju, Ms. Gauri Rajput, Ms. Ajunee
Singh, Advocates with Petitioner in
person.

versus

CHHAVI AGARWAL

..... Respondent

Through: Ms. Zeba Khair with Ms. Nikita Jain,
Advocates along with Respondent in
person.**CORAM:****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:**

1. This contempt petition has been filed by the Petitioner, husband, being aggrieved by the wilful non-compliance by the Respondent, wife, of the terms and conditions mutually agreed between the parties under the settlement agreement dated 01.09.2022 ('settlement agreement') and the affidavit of undertaking dated 03.09.2022, filed before the Family Court, Saket Courts, New Delhi ('Family Court') in HMA No. 669/2022.

2. Brief facts leading to the filing of the present petition are as under: -

2.1. The marriage between the parties was solemnized on 25.07.2015, however, due to the temperamental differences; the parties started living separately since 06.04.2017. The parties have instituted legal proceedings



against each other and their family members in Courts at Delhi and Bombay, and as on date there are as many as twenty (20) legal proceedings pending between the parties in different forums all arising out of their separation in marriage.

2.2. In these circumstances, the parties mutually agreed that there is no likelihood of reconciliation between them and with the intervention of the Family Court at Delhi; the parties were referred to mediation. The parties under the aegis of the Principal Counsellor appointed by the Family Court arrived at an amicable settlement of all their disputes and differences with respect to each of the aforesaid twenty (20) legal proceedings.

2.3. The parties, who had full access to legal advice from their respective counsel, drew up the settlement agreement, which contains fifty-six (56) clauses and enumerates a comprehensive step-by-step procedure for bringing an amicable resolution to the disputes and differences between the parties.

2.4. The parties agreed to execute the said settlement agreement and file the First Motion petition for divorce by mutual consent under Section 13(B) (1) of the Hindu Marriage Act, 1955 ('HMA') simultaneously. It is a matter of record that the settlement agreement and First Motion petition was duly executed by the parties and filed before the Family Court. An affidavit of undertaking in terms of the judgment dated 15.05.2018 passed by the Division Bench of this Court in ***Rajat Gupta vs. Rupali Gupta, 2018 SCC OnLine Del 9005***, incorporating all the terms of the settlement agreement, was affirmed and duly filed before the Family Court.

2.5. The parties appeared before the Family Court on 14.09.2022 and undertook in the joint statement, filed before the Court, to abide by all the



terms and conditions incorporated in the settlement agreement.

2.6. The Family Court after interacting with the parties, perusing the record and satisfying itself with respect to the lawfulness of the settlement arrived between the parties, passed the order dated 14.09.2022, allowing the First Motion petition and bound the parties to the joint statement made before the Court on 14.09.2022.

Re: Agreed upon terms of settlement and subsequent breach thereof by the Respondent

2.7. The parties had agreed that after the First Motion is granted, the Petitioner herein will execute a Gift Deed relating to Flat bearing No. A-52, Kalpataru Habitat, Dr. S.S. Rao Road, Mumbai- 400012 ('subject property') in favour of the Respondent.

2.8. It was agreed that the Respondent shall handover to the Petitioner a cheque of ₹ 9,91,408/- towards closure of the loan account maintained with the HSBC Bank and procure the original title deeds of the subject property from the said bank. It is a matter of record that the Respondent duly handed over the said cheque at the time of the grant of First Motion and the Petitioner duly deposited the cheque with the HSBC Bank and obtained the closure document of the Home Loan Account on 26.09.2022. The scanned copies of the title documents were furnished to the Respondent in compliance with the settlement agreement to enable her to draw a Gift Deed in compliance with clause 8 of the settlement agreement.

2.9. The draft of the Gift Deed was exchanged between the parties and the version of the draft, which was emailed by the Respondent on 07.10.2022 is the last agreed upon draft between the parties; this fact was confirmed by the Respondent's counsel in her email dated 03.11.2022.



Re: Maintenance dues

2.10. However, disputes arose between the parties with respect to procurement of certain ancillary documents from the Kalpataru Habitat Cooperative Housing Society Limited ('the Society'), where the subject property is located. The Respondent was insistent that without receipt of the said documents she was unwilling to accept the execution of the Gift Deed.

2.11. The managing committee of the Society was however, unwilling to provide any information or documents to either of the parties unless the maintenance dues of the Society were cleared in the first instance.

2.12. In this regard, the Respondent as per clauses 20 and 21 of the settlement agreement had undertaken to pay the outstanding maintenance charges of ₹ 13,48,758/-. The Respondent *vide* email dated 07.10.2022 clarified that any further maintenance charges, which may have accrued in the interregnum i.e., from 01.09.2022 until the final execution of the Gift Deed would have to be borne by the Petitioner and paid to the Society.

2.13. The Petitioner initially opposed the said demand of the Respondent. He however *vide* email dated 05.11.2022 conceded to bear the maintenance charges for the period beyond 01.09.2022; and requested the Respondent to remit the agreed amount of maintenance dues of ₹13,48,758/- to the Society directly and further undertook to remit the differential amount of maintenance, which was due and payable as on 05.11.2022, directly to the Society. In this email it was stated that the amount of maintenance due and payable to the society was ₹ 14,61,928/-.

2.14. However, the Respondent *vide* email dated 09.11.2022 rejected the said proposal of the Petitioner. She insisted that, in the first instance, the Petitioner should pay the entire amount of ₹ 14,61,928/- to the Society to



obtain the documents requested by the Respondent and that she will reimburse the agreed amount of maintenance i.e., ₹ 13,48,758/- at the time of execution of the Gift Deed.

Re: Withdrawal of legal proceedings.

2.15. In addition, the Respondent *vide* email dated 02.11.2022 further sought a change to the obligations assumed under clause 27 of the settlement agreement.

2.16. It had been agreed between the parties under clause 27 of the Settlement agreement that all the legal proceedings filed by the parties against each other (as enumerated in clause 30 of the said settlement agreement) would be withdrawn within ten (10) days from the finalization of the Gift Deed. The clause 27 of the settlement agreement reads as under: -

“27. Both Parties undertake that they shall withdraw the cases filed by them against each other within 10 days from the finalization of Gift Deed between Parties expect the quashing of FIR No. 63 of 2018, PS Kalachowky vide NOC by Second Party before the Hon’ble High Court of Bombay bearing W.P.(Crl) No. 2638 2022 which will be done after final decree of divorce of second motion. First Party undertakes to ensure that all cases mentioned in the table below filed by his parents against Second Party or and her family members shall be withdrawn within 10 days from the finalization of Gift Deed between Parties as stated above.”

(Emphasis Supplied)

2.17. In terms of clause 27, considering that the draft of the Gift Deed had been finalized on 03.11.2022, the parties ought to have withdrawn all the proceedings filed against each other on or before 13.11.2022. The parties had agreed that only the quashing of FIR No. 63/2018 would be pursued after the grant of the divorce in pursuance to the Second Motion.

2.18. However, the Respondent *vide* email dated 02.11.2022 proposed that neither party will withdraw any case against each other for the present and



all cases will be withdrawn only after the grant of the decree of divorce and execution of the Gift Deed.

2.19. The Petitioner did not respond to this demand of modification of clause 27 of the settlement agreement made by the Respondent *vide* her email dated 02.11.2022, which was also reiterated in her subsequent emails.

2.20. The Petitioner has in this contempt petition stated that he is willing to withdraw all the cases instituted by him or his family members simultaneously with the Respondent's withdrawal of cases filed by her.

2.21. It is a matter of record that on the issue of finalization of the draft of the Gift Deed, which includes payment of maintenance charges to the Society, twenty-nine (29) emails were issued by the Petitioner and twenty-three (23) emails have been issued by the Respondent between 16.09.2022 and 17.11.2022.

2.22. However, there was a complete dead lock between the parties and the Respondent was unwilling to proceed to execute the final version of the Gift Deed without verifying the documents of the Society.

2.23. The Petitioner as well was unwilling to pay the entire maintenance charges amount of ₹ 14,61,928/- to the Society for obtaining the said documents.

3. In the aforesaid circumstances, the Petitioner filed the present contempt petition on 30.11.2022 stating that the Respondent's conduct in not making payment of the maintenance charges to the society as per clauses 20 and 21 of the settlement agreement is in gross violation of the said agreement. It was stated that the email dated 17.11.2022 issued by the Respondent categorically asserting that she will not pay the maintenance charges is a violation of the affidavit of undertaking dated 03.09.2022. It



was further stated that non-execution of the Gift Deed by the Respondent even after its finalization also amounts to wilful violation of the terms and conditions of the settlement agreement.

Arguments on behalf of the Petitioner

4. The learned counsel for the Petitioner, Mr. Prabhjit Jauhar, relied upon the emails exchanged with the Society on 15.10.2022, 02.11.2022 and 04.11.2022 to contend that the Society was unwilling to share any information or documents until the maintenance dues are cleared. He stated that in view of the email dated 05.11.2022, the Petitioner has shown his bona fide and the Respondent was clearly reneging from the settlement agreement.

4.1. During the course of oral arguments before this Court on each date of hearing the Petitioner reiterated that he is willing to deposit an amount of ₹13,48,758/- with this Court to show his bona fide and to secure the interest of the Respondent. He stated that he is willing to pay and bear the differential amount of ₹1,13,170/- towards maintenance charges directly to the Society. He stated however, the Respondent must pay the agreed upon maintenance charges of ₹ 13,48,758/- directly to the Society as agreed under the clauses 20 and 21 of the settlement agreement.

4.2. He stated that the Petitioner remains ready and willing to execute the Gift Deed and abide by the terms of the settlement agreement.

5. On the first date of hearing in this petition, since the issue raised was with respect to maintenance dues of the society, the parties were referred to mediation with the expectation that the parties would be able to resolve this issue. However, a mediation report was received on 10.02.2023 stating that the mediation had failed.



6. The matter took a turn for worse, inasmuch as the Respondent took steps to pursue the pending legal proceedings including the application under Section 24 of the HMA before the Family Court and urged her cases, which are pending in Courts at Bombay. The said facts were placed on record by the Petitioner through CM. APPL. No. 15802/2023 and in his rejoinder dated 01.05.2023. The Petitioner contended that the said action of the Respondent in pursuing the legal proceedings is in gross violation of the clause 27 of the settlement agreement and in breach of the affidavit of undertaking dated 03.09.2022 filed before the Family Court.

Arguments on behalf of the Respondent

7. The Respondent at this stage in her reply dated 04.04.2023, categorically asserted before this Court that she had a rethink and she has decided to renege from the settlement agreement.

7.1. The learned counsel Ms. Zeba Khair, appearing for the Respondent, has asserted, relying upon the judgment of the Division Bench in ***Rajat Gupta*** (supra), that firstly, the Respondent has an unfettered right to withhold her consent to apply for divorce and since the Respondent has exercised her statutory right, consequently the settlement agreement dated 01.09.2022 has become redundant and irrelevant.

7.2. She states that secondly, the Respondent is entitled to renege from the settlement agreement as the Petitioner herein has failed to execute the Gift Deed on or before 04.10.2022 as was stipulated in the timeline agreed under the settlement agreement.

7.3. She thirdly, made a reference to the Respondent's father's terminal illness, which was diagnosed in the month of December, 2022 as an additional reason for reneging from the settlement agreement. It is alleged



that the Respondent is struggling for funds/finances for herself as well as her aged parents and has therefore decided to renege from the settlement agreement.

7.4. She has lastly urged that since the Petitioner has not been placed in any disadvantageous position after the execution of the settlement agreement. She states the Respondent's reneging from the same does not give rise to any cause of action to the Petitioner to maintain the present proceedings for contempt and his remedy, if any, lies in pursuing the legal proceedings as per clause 36 of the settlement agreement.

Analysis and conclusion

8. This Court has considered the submissions of the learned counsel for parties and perused the record.

9. As stated earlier, the Respondent in her reply dated 04.04.2023 has categorically stated that she had reconsidered her decision and has decided to renege from the settlement agreement. There is therefore, not an iota of doubt that the Respondent has retracted from the affidavit of undertaking dated 03.09.2022 given to the Family Court and the joint statement made before the Family Court on 14.09.2022.

10. With respect to the second submission of the counsel for the Respondent that in terms of the judgment passed in ***Rajat Gupta*** (Supra), the Respondent has unfettered right to withhold her consent to divorce, this Court is of the opinion that the same is incorrect and has no basis in law. While it is correct that this Court cannot compel the Respondent to file a second motion petition for obtaining divorce by mutual consent under Section 13 (B) (2) of the HMA, however, the remaining terms of the settlement agreement which includes clauses 20, 21 and 27 continue to bind



the Respondent and are not rendered redundant at the volition of the Respondent. Thus, the decision of the Respondent to wilfully not comply with the said clauses in contravention of her affidavit of undertaking would render her liable for punishment under contempt of Court.

11. This Court is also not persuaded with the submission of the Respondent, that since the Petitioner failed to execute the Gift Deed on or before 04.10.2022 (i.e., the time stipulated in the settlement agreement), the Respondent is entitled to renege from the settlement agreement. This Court has perused the emails exchanged between the parties with respect to the Gift Deed and more specifically the emails dated 07.10.2022, 10.10.2022, 02.11.2022, 03.11.2022, 05.11.2022, 09.11.2022 and 17.11.2022. After reviewing the emails, this Court is unable to accept the contention of the Respondent that the Petitioner in any manner delayed the finalization of the Gift Deed.

The Respondent *vide* her email dated 03.11.2022 agreed to the final version of the Gift Deed annexed with the email dated 07.10.2022 circulated by the Respondent. The Respondent herself in her email dated 17.11.2022 has not alleged that the time was of the essence and due to the non-execution of the Gift Deed on 04.10.2022 the settlement agreement has been breached or can be set at naught. Thus, this contention of the Respondent that the Petitioner has acted in the breach of the settlement agreement is an afterthought.

11.1. During the course of hearing, as well the Petitioner has expressed his readiness and willingness to execute the Gift Deed and clear the differential of the maintenance charges due and payable to the Society.

12. The learned counsel for the Respondent as well during the course of



the hearing on 01.06.2023 fairly admitted that the Petitioner has now agreed to each of the conditions of the Respondent with respect to the subject property as communicated in her emails; she however, reiterates that the Respondent is unwilling to proceed with the implementation of the settlement agreement with respect to the transfer of subject property and the withdrawal of the legal proceedings mentioned at clause 27 of the settlement agreement.

13. In the opinion of this Court, the admission made by the Respondent in her pleadings and her written submissions that she has decided to renege from the settlement agreement since she is struggling for funds/finances for herself and her aged parents, clearly evidences that Respondent is retracting from the settlement agreement only due to her dissatisfaction with the financial settlement which was arrived between the parties on 01.09.2022.

13.1. Before considering the aforesaid fact, this Court would like to record that to a query put to the Respondent during the course of hearing, the Respondent fairly submitted that she does not wish to resume her marital life with the Petitioner.

13.2. In the background of these twin facts, it is evident to this Court that the Respondent does not dispute that her marriage has infact broken down as has been recorded in the settlement agreement, affidavit of undertaking and the joint statement dated 14.09.2022; however, the Respondent seeks to pursue the legal proceedings for securing a more lucrative financial settlement.

13.3. In the opinion of the Court, this conduct of the Respondent is clear evidence of abuse of legal process and is not a bona fide ground for reneging from the settlement agreement.



13.4. In this regard, it would be instructive to refer to the judgment of a Coordinate Bench of this Court in *Avneesh Sood v. Tithi Sood, 2012 SCC OnLine Del 2445*, which has been approved by the Division Bench in *Rajat Gupta* (supra). The relevant para of the said judgment read as under:

“46. As aforesaid, the respondent was not bound to give the said undertaking to the Court. However, having given the same, voluntarily and consciously, with a view to derive the benefit of the agreement with the petitioner, if the respondent walks out of the same, only for the reason that she has changed her mind with regard to the custody/visitation rights of the minor child, she must take the consequences. Pertinently, even now, the respondent is not averse to proceeding with the mutual divorce petition and filing a second motion petition. However, she wants to do the same on her own terms in relation to alimony and custody/visitation rights, contrary to her earlier agreement which formed the basis of the first motion petition. It is, therefore, clear that her decision to withhold her consent for moving the second motion petition does not stem out of any new development or mitigating circumstance which would justify the same, but only on account of her having a change of mind on the aforesaid two aspects. It is not that the respondent has decided to continue with the marriage with the petitioner. She has not expressed any desire to resume marital life with the petitioner. It is not her case that her initial decision to move the mutual consent divorce petition was a decision taken by her in haste or was a mistake. Even now she does not dispute the fact that the marriage has, in fact, broken down but she wants to use her right not to give consent for the second motion petition as a bargaining point, which the petitioner prefers to call a black mail tactics.

47. No doubt the law gives the right to both the parties to take a decision whether, or not, to continue with the mutual consent divorce proceedings, and for that purpose a cooling off period of at least 6 months is provided under the scheme of the Act. It does not mean that an undertaking given by them to the Court to continue their consent even for moving the second motion petition can be said to be an illegal consent or undertaking or an undertaking recorded by the Court without jurisdiction. She, while giving her undertaking, did not undertake to commit an illegality, or to do anything which is barred by law. No one compelled the respondent to give the said undertaking. She could have kept her options open whether, or not, to give her consent for moving the second motion petition at the end of the cooling off period of six months. But she did consciously decide to give the said undertaking to the Court. This she did to derive benefit under the agreement with the petitioner.

48. If a party is permitted to resile from an undertaking given to the Court,



in pursuance of an agreement arrived at between the parties, without any penal consequences, the same would completely destroy the sanctity attached to such solemn undertakings, and would encourage dishonesty and disrespect for the judicial process. It would also undermine the majesty and authority of courts, and instill doubts in the minds of the litigating public with regard to the efficacy of the judicial process and, in particular, with regard to the process of accepting undertakings by the Court and of the efficacy of the undertakings given to the Court by a party, and the acceptance thereof by the Court, as a part of a settlement process. It was on account of the respondent's conduct of voluntarily giving her undertaking to the Court to abide by her settlement, and the acceptance thereof by the Court, which led the petitioner to agree to pay an amount of Rs. 7 crores in all to the respondent, and to part with a huge amount of Rs. 1.5 cores at the first motion stage. The respondent cannot make mockery of the law and mock at the Courts by now claiming that she has decided not to give her consent for moving the second motion petition, and that too for the reasons that she wants to renegotiate the terms of settlement, both in relation to her monetary compensation and custody/visitation rights in respect of the minor child. It is clear that the respondent has exploited and abused the process of the Court to serve her purpose, without intending to adhere to her solemn undertaking given to the Court."

(Emphasis Supplied)

13.5. The parties in the settlement agreement and the affidavit of undertaking had specifically made a provision to the effect that if either party commits a breach of the terms and conditions, the party committing breach would be liable to be punished under the provisions of the Contempt of Courts Act, 1971. A reference to this effect also finds mention in the email dated 03.11.2022. However, in complete derogation of the said clauses, the Respondent without impunity has taken a stand in the pleadings and during the arguments that she is not bound by the terms of the settlement agreement.

14. In the opinion of this Court, if this stand of the Respondent is accepted it will erode the faith of the general public in the legal proceedings and to the undertakings given to the Court. The Respondent's pleadings and her stand shows scant regard for the undertaking given to the Court to abide



by the terms and conditions of the settlement agreement.

14.1. In the facts of this case, there is no doubt that the Respondent's action in not executing the Gift Deed and pursuing the legal proceedings are wilful and deliberate violations of the terms of the settlement agreement; for pursuing an enhanced financial settlement.

15. As noticed hereinabove, the settlement agreement contained fifty-six (56) clauses whereof clause no. 36, 37, 40, 46, 47, 48, 49, 50 and 53 duly recorded the knowledge and understanding of the parties with respect to the binding nature of the said agreement and their understanding that this settlement agreement will have the imprimatur of the Court. The said clauses read as under:

"36. In the event of any violation on part of either party of any terms and conditions of the Present Agreement, either Party shall have the right to exercise all legal remedies available to them as applicable under any Statute/ Law and the aggrieved Party shall be entitled to revive all the cases as per Law.

*37. The Parties further agree and undertake that they **shall not resile** from or dispute this Settlement Agreement in future as long as all terms and conditions of the present agreement are complied with by both parties.*

40. The present settlement has been arrived at between the Parties and on behalf of their parents and relatives, out of their own free will and accord without any undue influence, force, or coercion.

*46. This Settlement Agreement has been entered into in **good faith** and shall be fully complied with and enforced and shall be binding on the parties and their family and relatives.*

47. It has been agreed between the Parties that they shall make appropriate statements before the concerned courts tribunals for authorities police and shall cooperate with each other in all the legal proceedings.

48. By signing this Settlement Agreement with respect to their further claims or demand against each other with respect to their marriage and all the disputes and differences in this regard have been amicably settled by the



Parties hereto.

49. *That the contents of this Settlement Agreement have been understood by both the Parties. Both the Parties undertake that they have signed the above settlement after going through and understanding the contents and they have settled the dispute between themselves of their own will and without any force, pressure, or coercion from any quarter.*

50. *That both the parties have executed this agreement settlement without perpetration of any force, undue influence, or coercion from any quarter, and both the parties shall be estopped in law to assail the validity of any clause term of the present agreement on the ground of the same being void or unlawful.*

53. *That both the parties to the present agreement undertake that they shall duly perform and abide by all the terms and conditions as contained in the present agreement and in case of breach of any of the terms and conditions as envisaged hereinabove, the parties are liable to be punished under the provisions of Contempt of Courts Act, 1971 as the present settlement agreement shall be duly filed in the Ld. Matrimonial Court, Family Court, where the parties shall file their mutual consent petition for divorce under Section 13(B)(1) and 13(B)(11) of the Hindu Marriage Act, 1955.”*

(Emphasis Supplied)

15.1. Each of the aforesaid clauses are mirrored in the affidavit of undertaking dated 03.09.2022 filed before the Family Court. The said clauses took the form of an undertaking in the affidavit dated 03.09.2022 and if the Respondent herein is permitted to succeed in her contention that the said undertakings given to the Court has become redundant and irrelevant as alleged at paragraph 11 of her reply, it would be a travesty of justice and a mockery of the Court.

16. It is trite law that an undertaking given to the Court binds the party and having given the undertaking the party is not at liberty to renege from the said undertaking treating it like an ordinary contract. It is for this reason that at the time of settlement, parties after entering into an agreement take the precaution of filing the same before the Court, have the Court's seal to



the said agreement and bind the parties to the same by having the undertaking tendered to the Court. In the facts of this case, each of the above steps were taken on 01.09.2022, 03.09.2022 and 14.09.2022. If parties such as the Respondent are permitted to walk away from their undertaking, the faith reposed by litigants in the judicial system and the finality of orders of the Court will be eroded.

16.1. It would also be instructive to refer to another judgment of the Coordinate Bench of this Court in ***D.K.C v. K.C. & Ors., 2016 SCC OnLine Del 185***, with respect to the duty of the contempt Court to ensure due compliance of the orders as under: -

“57. In the opinion of this Court, it is important for parties to appreciate that an undertaking has all the force of an injunction. It is equally as important as an injunction, and it has the same penalties for failure to abide by it as an injunction. It is all too easy for people to promise and all too easy for them to break that promise. Then they, quite rightly, have to face the wrath of the court for having made promises which were not worth the paper which they have signed.

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61. It is the obligation of this Court to uphold the majesty of law and to ensure that judicial orders are not flouted by a party who believes that it shall be the judge of its own case. This Court is of the view that it is the duty of contempt court to ensure compliance of orders and if the respondent no. 1's conduct is not reprimanded, there shall be no rule of law. The Supreme Court has held so in the following judgments :-”

(Emphasis Supplied)

16.2. The Respondent by failing to honour her undertaking is lowering the authority of the Court and interfering in the administration of justice. The Respondent at her whims and fancy wants to prosecute twenty (20) legal proceedings, to which as on 01.09.2022; she was satisfied to bring the same to an end. The Respondent clearly does not feel the burden of prosecuting twenty (20) legal proceedings and for a better financial bargain she is



willing to pursue the same. In the opinion of this Court the continuation of the said proceedings after the execution of settlement agreement is an abuse of process of law.

16.3. Lastly, this Court is also unable to agree with the contention of the Respondent that since the Petitioner has not been placed in any disadvantageous position, the Respondent's reneging from same does not give rise to any cause of action to the Petitioner to maintain these proceedings. As noted hereinabove in the settlement agreement at clause 53 parties had agreed that in case there is a breach of terms and conditions therefore the aggrieved party can maintain a petition under the Contempt of Courts Act, 1971. In this regard, the observations of the Division Bench in **Sh. Rajat Gupta** (supra) needs to be read in entirety and not selectively as sought to be done by the Respondent. The relevant paragraph of the judgment reads as under:

“(c) At the same time, a defaulting party can be held liable for civil contempt on the ground of breaching the terms and conditions incorporated in an undertaking given to the court or made a part of a consent order/decreed. In the event the aggrieved party approaches the court for initiation of contempt proceedings against the defaulting party for willful/deliberate breach of any of the terms and conditions of an undertaking/settlement agreement/consent order or a decree and takes a plea that as a consequence thereof, he/she has been placed in a disadvantageous position or has suffered an irreversible/grave prejudice, the court in exercise of its inherent powers of contempt, supplemented by the 1971 Act has the requisite jurisdiction to entertain the petition and direct restoration of status quo ante in every possible way. Besides directing the defaulting party to disgorge all the benefits/advantages/privileges that have/would have enured in its favour and restoring the parties to the position that was before they had arrived at such a settlement/agreement/undertaking and/or before the consent order/decreed was passed in terms of the settlement arrived at/undertakings recorded, the court has the discretion to punish the defaulting party for civil contempt, depending on the facts of a given case. Thus, contempt jurisdiction operates in a different field and is uninfluenced by the fetters imposed on a court



under the Act of 1955. The only rider to the above is that no direction can be issued even in contempt proceedings to compel the defaulting party to give its consent for a decree of divorce by mutual consent, as it is opposed to the object, policy and intent of Section 13B of the Hindu Marriage Act.

(Emphasis Supplied)

17. In the preceding paragraphs, this Court has already held that it is the Respondent who is the defaulting party and she has wilfully and deliberately violated the undertaking given to the Family Court on 03.09.2022 in the First Motion petition, which was accepted by the said Court on 14.09.2022.

18. This Court has come to the conclusion that the Respondent has reneged from the settlement agreement after wrongly interpreting the judgment passed in ***Rajat Gupta*** (Supra). The import of the said judgment is to permit the parties to retain their right of refusal from mutual divorce, in the event they decide to continue with their marriage. It cannot be interpreted in a manner, that the party is neither willing to continue with the marriage nor willing to abide by the settlement arrived at, in hope for a more lucrative settlement. In any event, the Coordinate Bench of this Court in ***Smt. Anamika Khurana v. Sh. Rajiv Khurana, 2016 SCC OnLine Del 1808***, has held that once rights of the parties stand settled and crystallized in terms of the settlement agreement, the original cause of action stands fused with the said settlement; and the rights of the parties, if any, to claim additional/further relief shall be in terms of the said settlement agreement. The relevant extract of the said judgment reads as under:

“10. Once legal rights and obligations of the parties, including the rights of the plaintiff/wife to maintenance or other aspects and amounts as per law are settled and crystallized in terms of the MOU between the parties, breach of the same, i.e breach of an agreement, would not mean that the original cause of action revives. Law provides that breach of the terms of the agreement entitles a party to the agreement such as the plaintiff/wife to seek enforcement of the terms with additional and further reliefs of interest or



penalty or damages and so on, however, the breach cannot revive an original cause of action which stands fused and settled by crystallizing the various terms as per the MOU entered into between the parties. Once there is an MOU as per various terms, including of lumpsum payment, rights of a plaintiff/wife would stand crystallized and satisfied as per the terms of the MOU and entitlement to compliances thereof. In case of non-compliance, the plaintiff has a remedy to enforce the terms of the MOU with claim for further/additional reliefs, but in law it cannot be that the plaintiff/wife can ignore the MOU and sue as if an original fresh cause of action exists. The first argument urged on behalf of the plaintiff is therefore rejected.

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14. In view of the above, as per the admitted facts, plaintiff has no legal right to claim rights in terms of the reliefs sought for in the suit by way of an original claim of maintenance under the provisions of the Hindu Adoptions and Maintenance Act and Protection of Woman from Domestic Violence Act, 2005 and the right of the plaintiff/wife as per the law will only be for enforcing the rights under the MOU dated 27.7.2007 alongwith the further additional and consequential rights including of interest or penalty and so on, on account of stated breaches of the terms of the MOU by the defendant/husband.”

(Emphasis Supplied)

19. This Court during the course of hearing had put to the Respondent that the concerns with respect to a smooth transfer of the subject property in the records of the Society can be monitored under aegis of the Court. She however, rejected the said offer and took a clear and unequivocal stand that she does not intend to proceed with her obligations under the settlement agreement.

In these circumstances, this Court finds that the Respondent is wilfully violating the settlement agreement and acting in breach of the undertaking and therefore, this Court holds the Respondent guilty of the civil contempt under Section 2(b) of the Contempt of Courts Act, 1971.

20. The Respondent has not tendered any apology in her reply and has, to



the contrary as noted above, boldly asserted that she is not bound by the settlement agreement and the undertakings given to the Court.

20.1. This Court is conscious that the power of contempt has to be exercised cautiously; however, there are no mitigating circumstances in this case where the Respondent has outrightly refused to comply with her undertaking. The Petitioner has on the other hand agreed to take all steps necessary for performing the terms and conditions of the settlement agreement.

20.2. This Court therefore, imposes a fine of ₹ 2,000/- on the Respondent. This Court further sentences the Respondent to simple imprisonment for a term of one (1) month. In case of default of payment of fine, the Respondent shall further undergo 15 days of simple imprisonment.

21. In the opinion of the Court the penalty of ₹ 2,000/- will not be sufficient to meet the ends of the justice, and that a sentence of imprisonment is necessary considering that the Respondent has deliberately, wilfully, intentionally and defiantly disobeyed the undertaking given to the Family Court despite grant of opportunities by this Court only with an intent to enhance her financial settlement with the Petitioner.

21.1. However, to enable the Respondent to purge the contempt, this Court directs that, in case, the Respondent exhibits her apology by complying with the terms and conditions of the settlement agreement within a period of two (2) weeks from today with respect to execution of the Gift Deed and payment of maintenance charges to the society; and further, undertakes not to proceed with the legal proceedings filed by her as enumerated in clause 27 of the settlement agreement and tenders an unconditional apology to this Court, the punishment of undergoing simple imprisonment will be recalled



by this Court, subject to the respondent complying with the aforesaid direction within the next two (2) weeks. This Court therefore, suspends the sentence of imprisonment awarded to the Respondent for a period of two (2) weeks.

21.2. However, in case, the Respondent does not comply with the said directions, she is directed to appear before the Registrar General of this Court on 24.08.2023 by 2:30 P.M. for surrender.

21.3. The Registrar General is directed on the said date to take all necessary steps to have the convicted contemnor to be taken into custody and cause her to be sent to Central Jail, Tihar, New Delhi under appropriate warrant of commitment for undergoing the sentence awarded.

22. The Respondent is directed to appear on 11.08.2023 before the Registrar General to furnish a security bond of ₹ 50,000/- and a surety of the like amount for her surrender.

CM. APPL. 52957/2022

23. The Petitioner in CM. APPL. 52957/2022 has prayed for a direction of stay of the proceedings initiated by the Petitioner and the Respondent against each other.

23.1. With respect to the proceedings initiated by the Respondent, the same are pending in District Courts at Bombay and this Court does not exercise any power of superintendence over the said Courts.

23.2. In fact, two of the proceedings enlisted in the application are pending before the High Court of Bombay and this Court has no jurisdiction to stay proceedings pending before the said High Court.

23.3. The Petitioner is duly represented in the said proceedings and has already filed appropriate applications before the said Courts opposing the



continuation of the said proceedings by the Respondent in violation of the settlement agreement.

23.4. The maintainability of the said proceedings before Courts at Bombay after the execution of the settlement agreement will be decided by the said Courts, which are the Courts of competent jurisdiction.

23.5. With respect to the proceedings initiated by the Petitioner himself. no directions are merited as the Petitioner can elect his course of action.

24. The Petitioner has relied upon the judgment of **D.K.C.** (Supra), wherein the Court at Para 62 and 64 has held as under:

“62. The facts narrated above would clearly indicate that the respondent No. 1-father is squarely responsible for removal of the child from the jurisdiction of the Indian Court. As there is a clear breach of the undertaking given by the respondent No. 1-father, this Court is of the opinion that appropriate directions have to be issued to close the breach. The Supreme Court in Mohammad Idris v. Rustam Jehangir Babuji, (1984) 4 SCC 216 has held as under : -

“4. On merits, the learned counsel submitted that the undertaking given was not in respect of the property concerned and that in any case the learned Single Judge was not justified in giving certain directions in addition to punishing the petitioners for contempt of court. We find no substance in the submissions made by the learned counsel. There was a clear breach of the undertaking given by the petitioners and we are of the opinion that the Single Judge was quite right in giving appropriate directions to close the breach. The special leave petition is, therefore, dismissed.”

XXX

XXX

XXX

64. Consequently, the respondent-father is directed to return the minor child to the petitioner-mother forthwith. If the respondent-father is of the view that consensual parenting plan is not working in the interest of the minor, he is given liberty to seek variation, modification and/or recall of the order dated 01st October, 2014. The rights and contentions of all the parties are left open.”

25. In the said judgment the directions were issued by the Court to the respondent before it and was therefore a direction *in personam*. However,



the said judgment cannot be relied upon for injuncting proceedings filed in Courts of another state.

25.1. Accordingly, the said application is disposed of as not maintainable in these proceedings reserving liberty to the Petitioner to pursue his remedied in accordance with law.

26. With the aforesaid directions, the present petition is disposed of. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 09, 2023/aa/asb



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