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

Date of decision: 16.12.2024

+ **MAT.APP.(F.C.) 428/2024, CM APPL. 73681/2024-Delay 208 days**

POOJA SHARMA

.....Appellant

Through: Mr. Prashant Mendiratta, Mr. Rahul Bhaskar and Ms. Tanya Bhutani, Advs.

versus

ARUN SHARMA

....Respondent

Through: Ms. Seema Seth, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

CM APPL. 73680/2024-Exp

1. Allowed subject to all just exceptions.
2. The application stands disposed of.

MAT.APP.(F.C.) 428/2024, CM APPL. 73681/2024-Delay 208 days

3. The present appeal preferred under Section 19 of the Family Courts Act, 1984 seeks to assail the order dated 15.04.2024 ["impugned order"] passed by the learned Family Court, Patiala House Courts, New Delhi in HMA No. 829/2018.
4. Vide the impugned order, the learned Family Court has rejected the application preferred by the appellant under Section 24 of the Hindu



Marriage Act, 1955 [“HMA”] seeking interim maintenance during the pendency of the divorce proceedings in the petition preferred by the respondent-husband. The learned Family Court has held that the appellant having earlier entered into a settlement with the respondent, she could not have retracted from the same and consequently her application seeking maintenance was not maintainable.

5. Learned counsel for the appellant submits that the impugned order is wholly perverse as the learned Family Court, despite noticing the fact that the said settlement entered into between the parties was not given effect, has rejected the application for maintenance by binding the appellant to the terms of the settlement which were admittedly never given effect. She also submits that this view is contrary to the judgment of the Division Bench of this Court in ***Rajat Gupta vs. Rupali Gupta***, 2018 SCC Online Del 9005.

6. Issue Notice. Ms. Seema Seth, learned counsel accepts notice on behalf of the respondent and is not in a position to deny that the settlement referred to in the impugned order was never implemented. She, however, submits, since the statements of the parties in terms of the settlement were recorded, the learned Family Court was justified in holding that she would remain bound by the terms of the settlement.

7. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the relevant extracts of the impugned judgment which read as under:-

“27. Thus, it can be seen that respondent chose three different reason at three different time period to back out of the terms of the settlement. Once she had settled her dispute and crystallized her all claims and bound herself to the terms of the settlement, she is not within her right



to back out of the terms of the settlement and agitate her right over and above the terms of the settlement. After backing out of the terms of the settlement she could not relegate herself to the position where she was prior to settlement. Promise made to the court has got to be respected and honoured and those who betrays court will not find any sympathy from the court. Accordingly, respondent's application under Section 24 of HMA remained no longer maintainable after the settlement having arrived at between the parties on 01.12.2012 as noted above.

28. *The contention that maintenance is a statutory right and therefore, there cannot be a contract against it, was negated by the Hon'ble Supreme Court in Ganesh v. Sudhir Kumar Srivastav & Ors bearing Civil Appeal No. 4031-4032 of 2019 holding that wife could give up her claim for the stridhan, alimony or maintenance. Earlier such a contract was deemed against public policy but having peace in the society is also in public interest. Majority of the litigations for divorce are lingering as parties are unable to settle financial issues qua maintenance etc. despite being clear in the mind that there is no willingness to live together and if such settlements qua maintenance are treated as against public policy it will impinge another public requirement of having peace and tranquility in the society. There would be no settlement in matrimonial disputes as husband would not agree for lumpsum payment towards the maintenance (past, present and future) because he would fear that wife may again drag him to litigation for maintenance and wife would not agree for monthly maintenance as she would fear that husband would flee away or would not be in a position to pay later or would not pay the same on time causing her to run upto the court for enforcement. Result would be parties would never settle their matrimonial dispute and could continue to spend their whole life in the Court at all levels. This state of affair would not be good for the nation and society, not to speak of the parties.*

29. *Howsoever in need of maintenance a wife may be, law on its own does not come to her rescue. It is only when she chooses to seek maintenance, the law get into action. Thus, to approach Court for maintenance etc. is a matter of choice of the party in need as no law compels him/her to ask for the same, so the party in need must be given choice to opt out of it as well by settling her claim or otherwise. Thus, once she has settled her claim, she should be estopped from claiming it again. Probably these might have been the consideration in the mind of Hon'ble Supreme Court in Ganesh (supra) for ruling that wife can give up or settle her claim for stridhan, alimony,*



maintenance (past, present and future). Same might have been in the mind of the Court in Anamika (supra) as well. Hence, in the present case once respondent had settled her claim for maintenance etc. she is estopped from agitating it again.

30. With respect to the contention that minor's right to maintenance could not be settled and claim for maintenance qua the son of the parties was maintainable, suffice it to say that no petition for maintenance has been filed by the minor through next friend or natural guardian and respondent cannot press for the same as she had settled her claim qua the upbringing, education etc. expenses of the child. This is not to say that minor did not have right to maintenance from the petitioner as minor's mother's settlement with minor's father would not bind the child but his claim for maintenance would be subject of consideration when minor would come to the court by way of his own petition. As has been noted above act of the parents affect the child, mother of the minor did not think of filing independent petition for maintenance on behalf of the minor and thus deprived the minor of his claim for the maintenance. Petitioner too on his own did not choose to help his son financially in whatever possible way he could have done it apart from what he has pleaded.

31. Be that as it may, in view of the above discussion and reasoning, application under Section 24 of the HMA filed by the respondent herein remained no longer maintainable in view of the settlement arrived at between the parties and thus hereby dismissed."

8. From a perusal of the aforesaid extracts of the impugned judgment, it is evident that the learned Family Court despite being conscious of the admitted position that the settlement entered into between the parties was not given effect to, has ignored the appellant's plea that in light of the subsequent decision dated 15.05.2018 passed by the Division Bench of this Court titled as **Rajat Gupta** (supra), she could not be held bound by the terms of settlement, wherein she had agreed for crystallization of her maintenance.

9. Further, we find that the learned Family Court instead of appreciating the effect of this Court's decision in **Rajat Gupta** (supra) rendered by the



Division Bench, has instead rejected the appellant's application for maintenance by relying on an earlier decision of the learned Single Judge in *Smt. Anamika Khurana vs. Sh. Rajiv Khurana*, 2016 SCC OnLine Del 1808.

10. We are, therefore, of the view that even if the submission of the learned counsel for the respondent that the appellant had, at the initial stage, accepted the terms of the settlement, were to be accepted, nothing much would turn on the same. As held by this Court in *Rajat Gupta (supra)*, the said settlement having not been acted upon, the same could not be treated as binding either on the appellant or the respondent. The learned Family Court could not have, in our considered opinion, rejected the appellant's application for maintenance for herself and for the minor child by accepting the respondent's plea that the appellant had already settled all her rights and that of the minor child by way of the settlement.

11. For the aforesaid reasons, we have no hesitation in holding that the learned Family Court has erred in holding that on account of the settlement arrived at between the parties on 01.12.2012, the appellant had lost her right to claim maintenance for herself as also for the minor child. Once this settlement was '*admittedly*' never acted upon, the appellant could not be deprived of her statutory right under Section 24 of HMA to claim maintenance from the respondent. The impugned order being unsustainable is, accordingly, set aside.

12. Before parting with the appeal which along with the application for delay is disposed of in the aforesaid terms, we make it clear that we have not



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expressed any opinion on the merits of the claims raised by the appellant in her application under Section 24 of the HMA. The matter is remanded back to the learned Family Court for adjudication of the appellant's application under Section 24 of the HMA afresh.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

DECEMBER 16, 2024/bh