



2024:DHC:8669



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 2nd September, 2024
Pronounced on: 29th October, 2024

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+ CONT.CAS(C) 464/2017, CM APPL. 9035/2019,
CM APPL. 18818/2019, CM APPL. 11523/2020,
CM APPL. 7540/2021, CM APPL. 1007/2023,
CM APPL. 47770/2023

SWATILEKHA TIWARI

.....Petitioner

Through: Mr. Prashant Mendiratta, Mr. Amitabh
Chaturvedi, Mr. Ankit Monga, Ms.
Somyashree, Mr. Sanchit Saini and Mr.
Samar Pratap Singh, Advocates

versus

SUNIL PANDEY

.....Respondent

Through: Mr. Anirudh Gupta, Advocate.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The **Contempt Petition** dated 03.07.2017, under Sections 11 and 12 of the *Contempt of Courts Act, 1971* read with Article 215 of the *Constitution of India, 1950* has been filed on behalf of Petitioner-Swatilekha Tiwari claiming that the Respondent-Sunil Pandey has committed the contempt of Court by contravening Order of this Hon'ble Court dated 10.01.2014 recording the Settlement dated 22.11.2023 *between the parties*, in CRL. M.A. No. 423/2014 filed in Bail Application No. 621/2013.

2. It is stated that during the pendency of the Anticipatory Bail Application of the Husband, the parties were referred to Mediation Settlement wherein an *Interim Mediated Settlement* was signed by the parties on 22.11.2013 in which it was agreed that the parties would live together for a period of six months and in case they were unable to



reconcile their differences amicably, they would take mutual consent divorce. It is submitted that the Respondent-Sunil Pandey is taking benefit of this Order, who having availed the Anticipatory Bail *vide Order dated 12.08.2014 in Bail Application No. 621/2013*, on the basis of this Settlement, is now refusing to abide by its terms and to grant Divorce by Mutual Consent. He has committed the Contempt of Court by wilfully disobeying the *Order dated 10.01.2014* recording the Mediated Settlement and is liable to be punished under the *Contempt of Courts Act, 1971*.

3. It is stated that though the Respondent-Sunil Pandey had initially lived with the Petitioner-Swati Lekha Tiwari and the daughter in a separate rented accommodation, but has failed to comply with the terms of settlement and has been taking advantage of her mental vulnerability and emotional condition by exercising undue influence and caused her into withdrawing all the litigations in June, 2014.

4. In early 2015, he started insisting that they should start living in the house of his parents at Faridabad, Haryana while he wanted to take employment outside Delhi. However, due to serious differences between the spouses they started living separately from 11.05.2016. The interim settlement and the final settlement were complied for a short while but because of serious differences, the final settlement never took place.

5. It had been agreed between the parties that they would maintain a joint savings account No. 12031050004728 in HDFC Bank, Pushpanjali Enclave and the Respondent-Sunil Pandey shall continue to deposit Rs. 90,000/- per month in the said account. Though the Respondent-Sunil Pandey complied with this term for a short while but thereafter, he stopped depositing the money. He has not paid a single penny, except depositing the school fee of the daughter, while all the other expenses of the daughter are being borne by the Petitioner. It is also claimed that the Respondent-Sunil Pandey has failed to transfer 50% share of Ahmedabad property in the name of the Petitioner.

6. The Petitioner-Swatilekha Tiwari has submitted that even now, she is more than willing to seek the intervention of the Mediator for facilitating the divorce by Mutual Consent, but the Respondent-Sunil Pandey is not forthcoming. The Petitioner even wrote an e-mail dated 21.05.2016 to the Respondent-Sunil Pandey explaining that it was impossible for them to reconcile their differences amicably and that they should file a



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Divorce by Mutual Consent. The proposed terms of settlement, were also detailed in the said e-mail. Another e-mail dated 08.08.2016 was sent by the Petitioner to the contemnor setting out the terms and conditions for grant of divorce by mutual consent. However, the Respondent-Sunil Pandey has been ignoring and delaying the discussions for settling the terms and conditions for mutual divorce.

7. Because of the conduct of the Respondent-Sunil Pandey, a *Legal Notice dated 13.02.2017* was served upon him to abide by the Settlement dated 10.01.2014 and to sign the petition for Mutual Consent, within a period of 14 days. But the Respondent-Sunil Pandey has not come forward either to sign the petition or to settle the terms in the interest of the parties and the children.

8. The Petitioner has always permitted the Respondent to regularly meet the child. On 31.03.2017, the Respondent-Sunil Pandey visited the house of the Petitioner-Swatilekha Tiwari at Pitampura, Delhi on the pretext of meeting the children, but actually created a nuisance and humiliated her and the family members in front of the neighbours. The Respondent repeatedly visited her house and created nuisance at her residence. He even got aggressive with her parents and cousin brother, Vipul Tiwari. The Police was called at Number 100 and they were all taken to the Police Station and a Complaint dated 01.04.2017 and 02.04.2017 was made by Dr. K.N. Tiwari, the father of Petitioner to the SHO, Mangolpuri, though no formal action is taken. Later on, to avoid any criminal action to be initiated against him, the contemnor gave a written *Undertaking* to the police that he shall not visit the house of his in-laws where the Petitioner was residing in future. Despite giving such undertaking, Mr. Sunil Pandey did not mend his ways. He sent derogatory message on 02.04.2017 from his mobile number abusing the Petitioner and her father. He also sent an e-mail on 01.04.2017 and 02.04.2017, abusing and blaming her father for all that had happened on 01.04.2017 and 02.04.2017. He also made a call on 04.04.2017, threatening and abusing the father of the Petitioner that he would beat him in his own house and that he was not afraid of his conversation being recorded and used against him in evidence. The Complaints thereto were made to SHO, Polic Station Mangol Puri.



9. While this Petition was pending, husband made a statement *on* 10.01.2023 wherein he admitted that he is not paying any amount towards maintenance and is unwilling to pay any amount towards the current maintenance of the children and the wife.

10. It is claimed that despite irreconcilable differences having arisen between the parties, the contemnor is not only refusing to abide by the terms recorded by this Court on 10.01.2014 but is also wilfully disobeying the said Order. The conduct of the contemnor is reprehensible and contumacious and such behaviour must be treated would highest degree of severity as his conduct tends to lower the dignity and the majesty of this Court. Hence, it is submitted that he be held guilty of summon contempt and the civil contempt be initiated and he be held guilty of civil contempt.

11. ***The Respondent/contemnor in his objections to this Petition***, has asserted that there were no directions given by the Court *vide* its Order dated 10.01.2014 that the parties shall take divorce by mutual consent. It merely recorded the terms of interim settlement between the parties. The Respondent denied all the allegations of dowry demands but admitted that there were disputes and differences between the parties. The *Interim Mediated Settlement* dated 22.11.2013 was arrived between the parties in an endeavour to reconcile their differences failing which the parties agreed that they shall take the divorce by mutual consent.

12. It is asserted that this Clause is being misinterpreted by the Petitioner. Borad terms of the Settlement were that the parties would reside together for a period of six months and try to sort out their differences and if they were unable to do so, they may seek divorce by mutual consent.

13. It is denied by the Respondent that he took advantage of this Interim Settlement to obtain the bail or that he had no intention to abide by the terms of the Settlement. He denied that he ever insisted that the Petitioner and the children should come to reside with his parents in Faridabad or other averments that have been made in the Petition, are also denied. The parties made a sincere effort and resided together for a period of two years and four months till 11.05.2016, after the Interim Settlement. During this period, they were blessed with a son.



14. It is further asserted that the terms of divorce as proposed by the Petitioner *vide* e-mail dated 21.05.2016, were not acceptable to him which he has already conveyed to the Petitioner. The Respondent's current financial situation does not permit him to pay Rs.90,000/- per month, apart from depositing Rs.15,00,000/- in Fixed Deposit. He is currently unemployed and has no financial resources. On the other hand, the Petitioner is working and is capable of earning and is not dependent upon the Respondent for the maintenance of herself and the children. The over averments of having creating scenes at the residence of the parents of the Petitioner, are all denied. It is asserted that the term '*mutual*' means by consensus and there was no such undertaking given by the Respondent that he shall give divorce by mutual consent. It is submitted that no contempt has been committed by the Respondent and the Contempt Application is liable to be dismissed.

15. ***The Petitioner in her Rejoinder has reiterated her submissions as agitated in the petition.***

16. ***The Ld. Counsel on behalf of the Petitioner has*** submitted that contempt should be issued in cases of non-compliance of mediation settlement agreement. Reliance for the proposition was placed on Anurag Goel v. Chhavi Agarwal 2023:DHC:5597; Avneesh Sood v. Tithi Sood 2012 SCC OnLine Del 2445; Indra Parischa v. Deepika Chauhan & Ors. 2022 SCC OnLine Del 1090; Shikha Bhatia v. Gaurav Bhatia & Ors. Cont. Cas. (C) 2010:DHC:2697; and Aditya Chandrashekhhar Pandit & Ors. v. State of NCT of Delhi & Anr. MANU/DE/3877/2012.

17. ***It is*** further argued on behalf of the Petitioner that in a Contempt case, the court can direct the defaulting party to disgorge all the benefits and advantages that have ensued in its favour on the basis of the Order of which he is in default, and restore the parties to status quo ante for which reliance is placed on Rajat Gupta v. Rupali Gupta (2018) DLT 289 (DB); and Rosey Sailo Damodaran v. Nitin Damodaran 2019 SCC OnLine Del 7159.

18. It was further submitted that settlement agreement amounts to a decree for which reliance is placed on M/s Arun International v. State of Delhi & Anr. 2015 SCC OnLine Del 9334. Further reliance was placed on Manoj Chandak v. M/s Tour Lovers Tourism



(India) Pvt. Ltd. & Ors. 2015 SCC OnLine Del 7309; and Jaibir & Ors. v. State & Anr. (2007) DLT 141 to submit that mediation settlement Agreement has to be honoured and should not be permitted to be defeated.

19. Ld. Counsel for the Petitioner argued that it is the duty of an able-bodied man to earn by legitimate means and maintain wife and children for which reliance has been placed on Anju Garg & Anr. V. Deepak Kumar Garg 2022 SCC OnLine SC 1314; Urvashi Aggarwal & Ors. v. Inderpaul Aggarwala 2021 SCC OnLine Del 4641; Farooq Ahmed Shala v. Marie Chanel Gillier 2019 SCC OnLine Del 8972; and Raghubar Singh v. State of Jharkhand & Ors 2024 SCC OnLine Jhar 163. Further, it was submitted that the Husband cannot ignore responsibility to maintain divorced wife and daughter on the ground of inadequacy. Reliance for this proposition was placed on Supriya Bhattacharjee & Anr. v. Debabrata Chakraborty 2021 SCC OnLine Tri 31.

20. Lastly, Counsel for the Petitioner asserted that Contempt must be issued in a continuing wrong for which reliance was placed on Mohan Nair v. Rajiv Gupta & Ors. 2015 SCC OnLine Del 9129; and Harshawadan Bandivadekar v. Taramati Harishchandra Ghanekar & Ors. 2008 SCC OnLine Bom 899.

21. **Submissions heard and Written Submissions perused.**

22. To answer this vexed question, one may first refer to the definition of Contempt and the principles of law which would normally guide the exercise of judicial discretion in the realm of contempt jurisdiction. ‘Contempt’ is an extraordinary jurisdiction under the Contempt of Courts Act, 1971 which is invoked by the Courts sparingly and in compelling circumstances, as it is one of the foremost duty of the courts to ensure compliance of its Orders.

23. It would be apposite to refer to **Section 2(b) of the Contempt of Courts Act, 1971** which reads thus:-

“2. Definitions. -

(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.”

24. It is thus, clear that for bringing an action under the ambit of Civil Contempt, there has to be a wilful disobedience of any judgment, decree, direction, order, writ or



other process of a court or wilful breach of an undertaking given to the court. The Supreme Court in case of Maninderjit Singh Bitta vs Union of India (2012) 1 SCC 273 examined the principles of law which would ordinarily guide the exercise of judicial discretion in the realm of contempt jurisdiction. It was observed that while exercising their contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the orders of the court, even to initiate a civil contempt. Every party to *lis* before the Court and even otherwise, is expected to obey the Orders of the court in its true spirit and substance.

25. ***From the entire conspectus of facts as detailed above,*** it is apparent that the parties, who got married in 2006, developed differences over a period of four years and separated on 01.05.2010. Thereafter, litigation got commenced under various Acts and during one such litigation in FIR No. 46/2013 under Section 498A/406/34 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*), registered at Police Station Mangolpuri, Delhi, the Respondent sought anticipatory bail and the parties were referred to the Mediation Centre, to make an endeavour to amicably settle their disputes. The parties arrived at an *Interim Mediated Settlement* on November, 2013, which was re-affirmed by the parties, before the Court on 2014 and thereafter, the parties were started residing together from 10.01.2014. It is evident from the terms of the Interim Settlement that the parties agreed to try to reconcile all their differences over a period of six months and in case, they were unable to live together, they may seek divorce by Mutual Consent. The sincere efforts were made by both the parties as is evident from the fact that they continued to live together for about one year four months till 11.05.2016. They were also blessed by one child during this period. Thereafter, the differences again crept up and they were not able to live together and they separated.

26. There was no manipulation or a false Interim Settlement made by the Respondent with the sole intent of securing an Anticipatory Bail for himself. The complexities of human relations are difficult to fathom. The conduct of the Respondent shows that despite their sincere efforts, the differences could not be sorted out and it led to eventual separation of the parties in May, 2016. Thereafter, the Petitioner admittedly has filed Petition for seeking divorce in addition to petition seeking Maintenance from the



Respondent. The Petitioner has thus, resorted to her legal remedy by moving the appropriate Petitions. In such backdrop, it cannot be said that there has been any wilful or contumacious conduct of the Respondent with respect to Interim Settlement which was agreed upon for a period of six months.

27. Furthermore, it has been rightly submitted on behalf of the Respondent that merely because it was stated that the parties shall take divorce by mutual consent, was only a statement of the entitlements of the parties under Law, but there was no undertaking that the parties shall take divorce by mutual consent. The entire ethos of the mutual consent divorce is that the parties may mutually agree that it has become impossible for them to live together. A period of six months is mandated between the first and the second Petition for divorce by mutual consent, only with an intent to give a second chance to the parties to re-think when faced with an impending divorce. It is well-settled that the Courts cannot compel either party to give the consent for divorce by mutual consent.

28. The parties by way of the *Interim Settlement*, had also agreed to try living together for a period of six months only, but if they did not succeed, the Respondent would pay Rs.90,000/- per month to the Petitioner and the child towards maintenance **and would also transfer 50% of the share in his property at Ahmedabad, to the Petitioner which** also was essentially part of the maintenance. It is pertinent to observe that the said Interim Settlement for grant of maintenance had been agreed in 2014. However, the Respondent has asserted that he does not have the same financial position as he is presently unemployed while the Petitioner has sufficient means to take care of herself and the children. It is a moot point whether the Respondent is in a position to pay the amount for which the Petitioner has a right to seek Maintenance under the law.

29. The above discussion clearly reflects that there was no wilful or contumacious disobedience of the Settlement arrived at between the parties on 23.11.2013. The Contempt proceedings cannot be used as a tool to compel the Respondent to abide by the wishes of the Petitioner. In view of the aforesaid, it cannot be said that Contempt has been committed by the Respondent of the settlement recorded by the Court on 10.01.2014.



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30. There is no merit in the present Petition, which is hereby dismissed along with pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 29, 2024/RS