



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 20th OF JANUARY, 2025

FIRST APPEAL No. 968 of 2018

SMT. NEETA

Versus

JITENDRA

.....
Appearance:

Ms. Varsha Singh Thakur, learned counsel for the appellant.

Shri Pritam Raman Giriya, learned counsel for the respondent.

.....

ORDER

Per: Justice Binod Kumar Dwivedi

With the consent of the parties heard finally along with I.A.No.5384/2024 filed by respondent for dismissal of appeal.

This first appeal under Section 19 of the Family Courts Act, 1984 (hereinafter referred to as 'the Act') has been filed by the appellant/wife being aggrieved by the judgment dated 23.03.2018 passed by learned



Additional Principal Judge, Family Court, Ujjain in Civil Suit No.108A/2016 whereby the marriage between the appellant/wife and respondent/husband has been annulled with a direction to the respondent/husband to pay Rs.12,00,000/- to the appellant/wife as full and final settlement of maintenance amount.

2. I.A.No.5384/2024 has been filed by the respondent/husband for dismissal of the appeal in view of order dated 06.05.2024 passed as per terms and conditions accepted by both the parties in mediation. Break up of the amount already paid and to be paid has been supplied by the counsel for the respondent. As per break up, Rs.25,45,000/- remains to be paid out of Rs.70,01,099/- which was agreed to be paid by the respondent to the appellant as per terms and conditions of the mediation report. As per condition no.5 incorporated in the aforesaid order, final installment of Rs.25,45,000/- was to be paid by the respondent to the appellant with a condition that she will withdraw this first appeal and on payment of this last installment, the decree of impugned divorce passed by the learned Family Court, Ujjain will be accepted by the appellant.

3. Learned counsel for the appellant submits that the appellant and respondent are legally married husband and wife and out of the



wedlock, one boy child Mitesh was born which is also not in dispute. Respondent has meted out domestic violence against the appellant and therefore, she filed complaint under the Protection of Women from Domestic Violence Act, 2005 registered as MJC No.25/2012 wherein order dated 31.08.2012 was passed in favour of the appellant with a direction to the respondent that he will pay Rs.4,000/- per month to the appellant and Rs.2,000/- per month to the child Mitesh as maintenance. She further submits that appellant is living separately from the respondent since 2003 due to misbehavior of the respondent. She has always been willing to fulfill marital obligations by living with the respondent, but he has not allowed her and the child to live with him. The learned Family Court has not appreciated the evidence tendered in evidence in right perspective and decreed the suit by recording perverse finding. It is also submitted that in compliance of order dated 31.08.2012 in M.J.C.No.25/2012 nothing has been paid. Her son is suffering from serious illness which will incur expenses atleast Rs.5 lacs, therefore, learned counsel urges the Court to accept the appeal and set aside the impugned decree of divorce.

4. Learned counsel for the respondent supporting the impugned judgment submits that it is the appellant who is responsible of the dispute



and she is living separately on her own effort. He further submits that in mediation between the parties, consensus was reached and as per terms and conditions accepted by both the parties, order dated 06.05.2024 was passed. In terms of the order, the respondent has already paid the rest of the amount except Rs.25,45,000/- out of Rs.70,01,099/-. He further submits that appellant cannot back out from the order which is based on compromise/mediation. It is also submitted that even on merits appeal has no force as learned Family Court appreciated the evidence in right perspective and prays for dismissal of the appeal.

5. Heard learned counsel for the parties and perused the record.

6. It is undisputed that appellant is living separately from the respondent and she has not cohabited with the respondent after that. Even though order of maintenance dated 31.08.2012 was passed in favour of the appellant in MJC No.25/2012, but no effort has been made by the appellant to reside with the respondent as wife. She has never filed an application under Section 9 of the Hindu Marriage Act, 1955.

7. From the perusal of the impugned judgment of the Family Court, it is apparent that evidence has been appreciated in right perspective, therefore, no case for reversal of the decree is made out on merits. During



the course of hearing, learned counsel for the appellant taking instructions from the appellant (who is present in Court) submits that if Rs.5 lacs is paid (for treatment of her son) in addition to the amount of Rs.25,45,000/- which remains to be paid by the respondent, as per terms and conditions of the order dated 06.05.2024, she in obedience of the aforesaid order, will accept the decree of divorce passed by the Family Court and not press her appeal. The appellant is bound by the terms and conditions of the settlement before the Family Court on 06.05.2024 which she has not challenged till date. Order dated 06.05.2024 is reproduced below:-

"प्रार्थी सहित श्रीमती डी.के. निधान अधिवक्ता उपस्थित।
प्रतिप्रार्थी सहित श्री एम.आई.कुरेशी अधिवक्ता उपस्थित।
प्रार्थी और प्रतिप्रार्थी के बीच दिनांक 21.02.24 को मध्यस्थता की कार्यवाही की गई थी।
प्रकरण का अवलोकन किया गया। प्रकरण में उभयपक्ष के मध्य दिनांक 21/02/2024 को मध्यस्थता कार्यवाही करवाई गई थी। उक्त मध्यस्थता की शर्तों के अनुसार:-
1- प्रार्थी एवं प्रतिप्रार्थी ने आपसी सहमति से विवाह विच्छेद याचिका प्रस्तुत करेंगे।
2- प्रतिप्रार्थी, प्रार्थी को कुल 70,00,000/- रुपये सत्तर लाख रुपये भरणपोषण की धनराशि अदा करेगा, जिसमें से 12,00,000/- रुपये जो प्रतिप्रार्थी द्वारा प्रार्थी के नाम नजारत में जमा है, वह समायोजित रहेंगे। इसके अतिरिक्त इंश्योरेंस पॉलिसी एवं एफ.डी. में जो पैसा है, वह भी उक्त सत्तर लाख रुपये में समायोजित होगा।
3- प्रतिप्रार्थी प्रार्थी को 14,00,000/- रुपये पहली किश्त



एक स्पताह के अंदर अदा करेगा, और इसके अतिरिक्त इंश्योरेंस पॉलिसी एवं एफ.डी. भी दे देगा। प्रार्थी उस दिन हस्तगत भरणपोषण धारा 125 दं.प्र.सं. का प्रकरण रेफरल न्यायालय से वापस ले लेगी।

4- प्रतिप्रार्थी प्रार्थी को घरेलू हिंसा का प्रकरण वापस लिये जाने वाले दिन दूसरी किश्त 15,00,000/- रुपये की अदा करेगा।

5- प्रतिप्रार्थी, प्रार्थी को अंतिम किश्त जो कि लगभग 25,00,000/- रुपये की होगी, वह माननीय उच्च न्यायालय में विवाह विच्छेद की लंबित अपील क्र 0 968/2018 को प्रार्थी द्वारा वापस लेने पर अदा करेगा। प्रार्थी अंतिम किश्त लेते ही विवाह विच्छेद की डिक्री को स्वीकार करेगी।

6- इसके पश्चात दोनों पक्षों के बीच किसी प्रकार का कोई विवाद शेष नहीं रहेगा और दोनों पक्ष अपनी अपनी जिंदगी अपने हिसाब से जीवन यापन करेंगे।

7- यदि दोनों पक्षों में से कोई भी पक्ष मध्यस्थता के दौरान की किसी भी शर्त का पालन नहीं करता है तो वह उसी स्तर पर पहुंचेंगे जो उनका आज स्तर है एवं प्रतिप्रार्थी अपनी दी हुई किसी भी किश्त में दिये गये पैसों को वापस प्राप्त करने का अधिकारी होगा।

मध्यस्थता की शर्तों एवं रिपोर्ट के अनुसार प्रार्थी नीता के बैंक में 14 लाख रुपये स्थाई भरणपोषण की पहली किश्त आने संबंधी टीप प्रार्थी द्वारा आज आदेश पत्रिका पर लेख की गई। इसके अतिरिक्त इंश्योरेंस पॉलिसी एवं बैंक और पोस्ट ऑफिस की एफ.डी. भी प्रार्थी नीता ने न्यायालय के समक्ष प्राप्त की है।

उक्त सभी दस्तावेजों से संबंधित फोटोप्रतियों अभिलेख पर संलग्न की गई।

प्रार्थी द्वारा आज व्यक्त किया गया है कि राजीनामा होने से वह प्रकरण आगे चलाना नहीं चाहती है एवं प्रकरण



वापस लेना चाहती है।

चूँकि प्रार्थी एवं प्रतिप्रार्थी के मध्य मध्यस्थता की शर्तों के अनुसार राजीनामा हो चुका है। ऐसी स्थिति में हस्तगत भरणपोषण का प्रकरण आगे चलाये जाने का कोई औचित्य नहीं है एवं प्रार्थी के निवेदन पर हस्तगत प्रकरण अंतर्गत धारा 125 दं.प्र.सं. राजीनामा के आधार पर समाप्त किया जाता है।

प्रकरण का परिणाम दर्ज होकर प्रकरण अभिलेखामार प्रेषित हो।"

8. On this learned counsel for the respondent after taking instructions from the respondent on phone/mobile submits that his client agrees to pay Rs.2 lacs in addition to the amount of Rs.25,45,000/- which is to be paid by him in compliance of the order dated 06.05.2024. When the point of non payment of maintenance amount @ Rs.6,000/- p.m. was raised by the appellant since 2018 and looking to the arrears of amount of maintenance, counsel for the respondent agrees that no maintenance amount has been paid to appellant during pendency of this first appeal since 2018. Hence, in our considered opinion respondent is also liable to pay Rs.5 lacs in addition to the amount of Rs.25,45,000/-.

9. In view of the aforesaid, as good sense prevailed on both the parties, this appeal is disposed off in terms of the order dated 06.05.2024 with condition that Rs.30,45,000/- will be paid by the respondent to the appellant within a period of 30 days from the date of passing of judgment



by this Court and subject to payment of this amount, marriage between the appellant and respondent is dissolved. In case of failure to pay the aforesaid amount within the stipulated time, this appeal will stand revive. They will be free to live their life as their own wish and will not claim anything from each other in future on decree being final.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

RJ