

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 2699 of 2023
With

CIVIL APPLICATION (FOR PRODUCTION OF ADDITIONAL EVIDENCES)
NO. 2 of 2023
In

R/FIRST APPEAL NO. 2699 of 2023

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KRISHNABEN W/O DHAIRYA DINESH PANCHAL
Versus
DHARRYA DINESH PANCHAL
=====

Appearance:

TANAYA G SHAH(8430) for the Appellant(s) No. 1

JENIL M SHAH(7840) for the Defendant(s) No. 1
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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI
and
HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHAK

Date : 02/11/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE HEMANT M. PRACHCHAK)

1. By way of present Appeal, the appellant-wife has challenged the impugned judgment and order dated 27.9.2022 passed in Family Suit No. 18 of 2017 by learned Principal Judge, Family Court, Anand and prayed

for following relief/s:-

“5(I) That the Hon’ble Court be pleased to quash / set aside adverse findings contained in the Impugned Judgment vis-a-vis issue no. 1 being “whether the plaintiff proves that the opponent has withdrawn from the society of the plaintiff without any reasonable cause” and to modify the Impugned Judgment and decree accordingly.

(II) That the Hon’ble Court be pleased to quash / set aside adverse findings contained in the Impugned Judgment vis-a-vis issue no. 2 being “whether the plaintiff proves that the opponent has treated him with cruelty” and to modify the Impugned Judgment and decree accordingly.

(III) That the Hon’ble Court be pleased to enhance the amount of permanent alimony granted in favour of the Appellant to Rs.25,00,000/- (Rupees Twenty Five Lakh Only) or any other amount that this Hon’ble Court deems appropriate and to modify the Impugned Judgment and decree accordingly.

(IV) That the Hon’ble Court be pleased to direct the Original Plaintiff-Respondent herein to forthwith return to the Appellant herein all Stridhan and jewellery belonging to and owned by the Appellant and which has been lying with the Original Plaintiff-Respondent and / or Original Plaintiff - Respondent’s family as more particularly set out in the List of Stridhan and jewellery produced at serial no.48 in the paper book filed along with the present Appeal.”

2. The brief facts giving rise to present Appeal are that

the marriage between present appellant-wife and respondent-husband was solemnized on 30.12.2014 at Vadodara. Thereafter, the appellant and respondent were staying together in Abroad and after some time, matrimonial dispute arose between the appellant and the respondent and therefore, some time quarrel was also took place between them.

2.1 Thereafter, in February 2016 in view of completion of Viza, the appellant herein returned India and thereafter, the appellant has not returned back abroad.

2.2 In view of aforesaid facts, the respondent herein had filed Family Suit No. 18 of 2017 before the Court of Principal Judge, Family Court, Anand for divorce decree under Section 13(1) of the Hindu Marriage Act. The Family Court vide order dated 27.9.2022 allowed the said Family Suit No. 18 of 2017 and directed the respondent-husband to pay lumpsum permanent alimony of Rs.5,00,000/- (Rupees Five Lacks) to the wife under Section 25 of the Hindu Marriage Act.

2.3 Being aggrieved and dissatisfied with the said judgment and order dated 27.9.2022 passed in Family Suit No. 18 of 2017 by learned Principal Judge, Family Court, Anand, the wife has filed present Appeal.

3. Heard learned advocate Ms. Tanaya G. Shah for the appellant-wife and learned advocate Mr. Jenil M. Shah for the respondent- husband.

4. It appears from the record that present Appeal is filed by the respondent of Family Suit No. 18 of 2017 i.e. wife. The said suit was instituted at the behest of the husband - respondent herein under the provisions of Section 13(1) of the Hindu Marriage Act, 1955 (*herein after referred to as the "Act"*) on a ground of cruelty and desertion. The said suit came to be allowed by the learned Principal Judge, Family Court, Anand vide judgment and order dated 27.9.2022 and declared the marriage solemnized between present appellant and the respondent on 30.12.20214 as annul from the date of 27.9.2022 i.e. from the date of judgment. The appellant-wife has challenged

the said order mainly on the ground that the Trial Court has not considered the submissions made on behalf of present appellant - original respondent while passing the impugned judgment and order of annulment of the marriage solemnized by and between the husband and wife on 30.12.2014 under Section 13(1) of the Act.

5. The appellant has also contended in the present appeal that the Court has not considered the fact that there is no material produced by the respondent original-applicant to the suit to prove the allegation of cruelty and desertion and therefore the decree passed by Trial Court is erroneous, illegal, bad in law and therefore, the same deserves to be quashed and set aside. The appellant has also further contended that the averment made in the plaint with regard to the character of the appellant is far fetching truth and there was no evidence produced before the Family Court in this regard and in absence of any cogent and relevant material, the Court has made certain remarks for that there was no any proof produced by the respondent - original applicant and therefore, also the

impugned judgment and order of Family Court deserves to be quashed and set aside.

6. The Appeal came up for hearing before this Court on 23.8.2023 and this Court issued notice to the other side and in pursuance thereto learned advocate Mr. Jenil M. Shah has received an instructions to appear on behalf of the respondent husband.

7. It appears that after the decree was passed by the Family Court and before approaching the Court, the appellant and the respondent have settled the matrimonial dispute by executing an agreement i.e. Memorandum of Understanding ("MOU" for short) between the appellant and the respondent and thereby they have mutually agreed to accept the decree of divorce on certain terms and conditions mentioned in the MOU. In support of the same, the appellant and the respondent have filed their respective affidavits before this Court stating that they have mutually agreed and accepted the decree of divorce whereby the Family Court has annulled

the marriage between the husband and wife solemnized on 30.12.2014.

8. Therefore, now at this juncture, the appellant has submitted that in view of the subsequent settlement in terms of the MOU by and between the appellant and respondent and the conditions mentioned in the said agreement, both the sides have exchanged their respective dowry ornaments to each other and there is nothing remained against each other and in addition thereto the respondent -husband has paid lumpsum amount towards the permanent alimony of Rs.5,00,000/- by way of Account Payee cheque of H.D.F.C. Bank, Anand bearing cheque No. 00042, dated 10.8.2023 in favour of present appellant. In view of that both the parties i.e. husband and wife have urged before the Court that in view of the settlement arrived at by and between the appellant and the respondent, present appeal be allowed to the extent that the observation made by the Family Court with regard to the character of the appellant and the father of the respondent may be struck off from the

order, as they have mutually agreed and entered into MOU and since last more than 7 years they are residing separately from each other and more particularly they are not being pressed to continue as mutually agreed. The respondent husband is residing in India and frequently visited U.S.A as he is being resident of U.S.A. and the appellant wife is also since last 7 years residing in U.S.A. Therefore, they have mutually agreed that they are not inclined to reunite and since their relationship as husband and wife is now in irreversible situation and completely irretrievable break-down of marriage and therefore, considering all these facts they have mutually agreed and executed the MOU and accepted the impugned decree passed by the Family Court. Hence in view of this even both the learned advocates representing respective sides have jointly submitted with specific consent to pass order in view of the fact that issue is resolved between parties to the proceedings.

9. We have perused the copy of the MOU along with

the affidavit filed by both the sides and considering the averments therein, we are of the opinion that the impugned judgment and order passed by the Family Court, whereby the marriage solemnized between the appellant and respondent was declared annulled from the date of the order, requires to be confirmed. We have also observed that the remark made by the Family Court, while considering the character of the present appellant wife and respondent husband and his family members, is unwarranted in view of the fact that both sides have consented to the same to be withdrawn and therefore, the said observations are hereby struck off and the same will not come in the way of either side. We are also aware the settled legal position with regard to the law on the subject. We have also perused the recent judgments of Hon'ble Apex Court in the cases of ***Naveen Kohli vs. Neelu Kohli reported in 2006 (4) SCC 558, Shilpa Sailesh vs. Varun Sreenivasan reported in 2023 SCC online SC 544, Smt. Roopa Soni vs. Kamal Narayan Swami reported in 2023 6 SCALE 402, Dr.***

Nirmal Singh Panesar Vs. Paramjit Kaur Panesar allias Ajinder Kaur Panesal reported in 2023 SCC online SC 1297 and also the another judgment of Allahabad High Court in case of ETI Tyagi vs. Prince Tyagi wherein the facts are almost identical to present Appeal and therefore, for the sake of convenience, we are referring and relying upon the decisions of the Hon'ble Apex Court and the judgment of the Allahabad High Court.

10. Here also in present case, both the parties have amicably settled their matrimonial dispute through MOU dated 10.8.2023 and also executed an affidavit in support of the MOU and also chosen to part with the dowry ornaments remained with each other and handed over to each other and also chosen to depart way in a situation, where the marital relationship had turned completely irretrievable. The parties have also acted upon the terms and conditions mentioned in the MOU and therefore, we are of the view that it is not open for this Court to do judicial scrutiny of the MOU, except on a ground of fraud

but here it is not the case of fraud. The Family Court in the present case has ofcourse made certain observations with regard to the character of either side, which is not otherwise warranted since it is an admitted fact that within short span of the marital relation i.e. within two years, the parties have separated and since last seven years they are living separately from each other and even before the Family Court, the present appellant did not chose to remain present and therefore, the Family Court ought to have refrained by making any remarks towards the character of the either party and the Family Court ought to have passed the decree mainly on the ground of desertion. The Family Court has in present case ofcourse has not gone into the legality of the MOU, as it was not executed at the relevant point of time but had rather passed the decree on the ground of cruelty and desertion. The mandate of the statute remains procedural. The substantive rights of two parties to settle the matrimonial conflict by an amicable settlement, in a case where the settlement so arrived, is with free will and without there

being any compulsion. The amicable settlement would serve the object of justice. The object of an amicable settlement is to put the dispute at rest the entire controversy recognized by a Court of law in such kind of cases where the MOU remains unquestionable and with free will and the parties act upon it freely.

11. The Hon'ble Apex Court in the case of ***Amit Kumar Vs. Suman Beniwal reported in 2021 SCC online 1270*** though observed that the institution of marriage is to be saved by preventing hasty dissolution of marriage, but at the same time once the parties have separated and separation has continued on account of irretrievable break down since last seven years, in such a situation the Apex Court taking the aid of judgment reported in the case of ***Naveen Kohli (supra)*** has also find otherwise that once the marital bond between the husband and wife is come to irretrievably break down, then in that circumstance, without litigating further if the parties have come to an amicable settlement and mutually agreed to give up their marital rights and to

divorce from the marital relationship, the same is not against the law.

12. The parties before this Court have submitted that they have with their free will and wish accepted the terms and condition mentioned in the MOU and they have mutually agreed to accept the decree of divorce passed by the Family Court 27.9.2022 and they have acted upon the said MOU and there is no issue remained out of the said wedlock. Both the parties have parted with their articles which they have received at the time of marriage and now they have no any complaint with regard to anything further. This MOU is without there being any compulsion and looking to the irreparable situation and irretrievable break-down which resulted into the marriage unworkable to allow the proceedings later on, such a case would result to defeat the purpose of MOU and distance the parties from the succor of justice.

13. In the peculiar facts and background of this case, we hereby allow this Appeal in the terms of the decree

passed by the Family Court. So far as the observations made with regard to the character of either party is concerned, the same are hereby struck off and the same cannot be come in way of either party.

14. Now, on the basis of the MOU and in view of the fact that the decree of divorce passed by the Family Court before one year, we are not remitting present Appeal to the concerned Family Court and therefore, we hereby confirmed the decree of divorce passed by the Family Court on the basis of the amicable settlement arrived at between the parties to the proceedings as they have mutually agreed and accepted the decree of divorce passed by the Family Court under the provision of Section 13(1) of the Hindu Marriage Act.

15. Accordingly present Appeal is hereby allowed to the extent as herein above mentioned. No order as to cost.

ORDER IN CIVIL APPLICATION NO.2 OF 2023

In view of the order passed in the main First Appeal, present Civil Application does not survive and the same stands disposed of accordingly.

(ASHUTOSH SHASTRI, J)

SURESH SOLANKI

(HEMANT M. PRACHCHHAK, J)