

PRANAY MAJUMDAR

v.

BINA MAJUMDAR

JANUARY 17, 2007

[DR. AR. LAKSHMANAN AND V.S. SIRPURKAR, JJ.]

*Special Marriage Act, 1954—S.27(d)—Divorce petition—Settlement—Parties not living together since 17 years—Living together peacefully by both parties not possible—Offer of husband of Rs.3 lacs by way of permanent alimony to wife in full and final settlement, accepted by wife—Decree of divorce granted.*

Appellant-husband filed a suit for divorce. Trial Court decreed the same. On appeal, High Court set aside the decree.

Husband filed appeal before this Court. This Court passed an order on 26.9.2006 that the parties are not living together since 1990 and there is no hope for parties living together peacefully. Appellant-husband offered a sum of Rs.3 lacs by way of permanent alimony to wife in full and final settlement of the entire claim. This Court directed wife to consider the offer. Both the parties filed a Joint Memorandum of settlement duly signed by all the parties.

Disposing of the appeal, the Court

**HELD:** It is represented by the appellant-husband that pursuant to the joint Memorandum of Settlement, a sum of Rs.3 lacs in full and final settlement of all the claims of the respondent-wife as a permanent alimony was paid to her by way of a demand draft. The respondent-wife has also stated that she has received the demand draft for a sum of Rs.3,00,000 (three lacs). The respondent, as per Memorandum of Settlement, would not claim any future claim for her and her daughter who is residing with her first husband. In view of the settlement now reached between the parties, the order of the High Court impugned in this appeal is set aside and there will be a decree of divorce as ordered by the trial court in respect of the appellant and the respondent. [Para 6] [1092-E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 267 of 2007.

A From the Final Judgment/Order dated 2.12.2003 of the High Court of Calcutta in F.M.A. No. 1401/2000.

S.B. Upadhyay, Sr. Adv., Santosh Mishra, Shiv Mangal Sharma and Sharmila Upadhyay for the Appellant.

B Anoop Kumar Srivastava and Rameshwar Prasad Goyal for the Respondent.

The Judgment of the Court was delivered by

**DR. AR. LAKSHMANAN, J. :** Delay condoned.

C 2. Leave granted.

3. This appeal is directed against the final Judgment/Order dt.02.12.2003 passed in FMA No.1401 of 2000 by the High Court of Calcutta.

D 4. The appellant before us is the husband of the respondent herein. The appellant filed an application under Section 27(d) of the Special Marriage Act, 1954 in the City Civil Court at Calcutta being Matrimonial Suit No.268 of 1991 seeking divorce from the respondent alleging cruelty. Later, the suit was transferred to the Family Court, Calcutta and re-numbered as Matrimonial Suit No.103/1995. The suit filed by the appellant was decreed by the trial court. Aggrieved against the order of the trial court, the respondent filed F.M.A.No.1401 of 2000 in the High Court and the High Court by the impugned order, allowed the F.M.A.No.1401 of 2000. Hence, the present appeal has been filed in this Court. During the pendency of the appeal, we passed the following Order on 26.09.2006 :-

F "After hearing both parties, we pass the following Order on 25.08.2006 :—

G "The Husband is the petitioner before us, who had filed the petition for divorce before the Family Court, which was allowed. Aggrieved against the said order, the respondent-wife filed an appeal before the High Court, which was allowed. Aggrieved against the order of the High Court, Husband has come up before us by way of filing the instant special leave petition.

H It is now stated that though the marriage took place on 25.9.1987,

the parties are not living together from 29.6.1990 onwards and there is no hope for the parties living together peacefully. The learned counsel for the respondent-wife has also submitted that living together hereafter by both parties is not possible, and therefore, if suitable compensation by way of permanent alimony is granted, an order can be passed dissolving the marriage. The learned counsel for the petitioner-husband offers a sum of Rs.3,00,000 by way of permanent alimony to the respondent-wife in full and final settlement of the entire claim. The learned counsel for the husband further submits that the husband owns certain land and he can sell the land and pay money to the respondent-wife. For that, he needs some time. Since a proposal has been made today, we direct the learned counsel for the respondent-wife to ascertain the views of the respondent and then report to us. We direct both the parties to be present in person in this Court on 26th September, 2006. Post this matter on 26th September, 2006 (NMD).”

5. When the matter came up today for hearing, both the parties filed a Joint Memorandum of Settlement duly signed by all the parties and attested by the counsel appearing on either side. The same is taken on record. The Joint Memorandum of Settlement reads thus :—

“(1) That the petitioner-husband shall pay a sum of Rs.3,00,000 (Three lacs only) in full and final settlement of all the claims of the wife towards permanent alimony within a period of 3 months or earlier by demand draft.

(2) That the respondent wife shall have no claim of any kind including any claim over the plot of land measuring 2 Kottah 1 Chhittak 15 sq.ft., Naihati No.168 in Dag No.68 under Municipal Corporation of Halishahar, Mauza: Balibhara, 24 Parganas (North), West Bengal under sub-Registry of Naihati, registered on 26.2.1988 (WB). The petitioner husband shall be exclusive owner in possession of the said land.

(3) That all original papers/documents pertaining to the aforesaid plot of land which are in custody of the respondent wife shall be returned to the petitioner, within a period of 10 days from today.

- A (4) That the respondent - wife shall not create any obstruction in disposing of the said plot of land by the petitioner if he so desires.
- (5) That the said amount of Rs.3 lacs by demand draft as permanent alimony shall be paid by the petitioner - husband to the respondent wife within a period of 3 months or earlier. On receipt of the said amount, the Criminal Revision Application pending before the Calcutta High Court, preferred by the respondent-wife against the order dt.31.12.2004 passed in M.Case No.38/2000 (T.R.No.64/2000) by the IVth Judicial Magistrate, Barracpore, West Bengal under Section 125 Cr.P.C. shall stand withdrawn.
- B
- C (6) That on payment of the said amount of Rs.3 lacs; the respondent wife shall not claim any future maintenance for her and/or for her daughter born out of the wedlock with her first husband.
- D (7) That while granting the leave, the instant appeal may be allowed and accordingly the decree of divorce may be granted on the above said terms."

Place this matter on 09.01.2007 for reporting compliance."

- E 6. It is now represented by learned counsel for the appellant that pursuant to the Joint Memorandum of Settlement, a sum of Rs.3,00,000 (three lacs) in full and final settlement of all the claims of the respondent-wife as a permanent alimony was paid to him by way of a demand draft. The learned counsel for the respondent-wife has also stated that he has received the demand draft for a sum of Rs.3,00,000 (three lacs). The respondent, as per
- F Memorandum of Settlement, shall not claim any future claim for her and her daughter who is residing with her first husband. In view of the settlement now reached between the parties, the order of the High Court impugned in this appeal is set aside and there will be a decree of divorce as ordered by the trial court in respect of the appellant and the respondent. The appeal stands disposed of accordingly. No costs.

G

D.G.

Appeal disposed of.