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VENNANGOTANURADHA SAMIR

v.

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VENNANGOT MOHANDAS SAMIR

(Transfer Petition (Civil) No. 702 of 2015)

DECEMBER 02, 2015

[M.Y. EQBAL AND C. NAGAPPAN, JJ.]

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Hindu Marriage Act, 1955 – ss. 13B – Matrimonial dispute – Petition for dissolution of marriage on the ground of cruelty – Application before Supreme Court for transfer of divorce petition pending before Family Court Bombay to Family Court at Hyderabad – Matter referred to Supreme Court Mediation Centre for amicable settlement – Settlement agreement wherein husband agreed to pay Rs. 12.5 lakhs to his wife towards full and final settlement as alimony and maintenance at the time of passing of decree of divorce by mutual consent – While filing application for divorce by mutual consent wife stated that she requires funds urgently as she is suffering from a life threatening disease and has to depend on herself for proper care – Held: Settlement is nothing but a contract to dissolve the marriage, the court has to satisfy itself that the contract is legal and valid in the eye of law – Fact that the wife was ready for the mutual consent divorce after knowing about her medical condition raised a suspicion in the mind as to whether the consent obtained from the wife is free as required by law for granting the decree of divorce by mutual consent – It was pre-existing duty of the husband to provide facilities for the treatment of the petitioner, provided the husband has sufficient means and he is diligently doing his part in taking care of her – By the settlement agreement the husband is promising to do

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something which he is already duty bound, is not a valid consideration for the settlement – Transfer petition is allowed – Husband to pay Rs 5 lakhs out of Rs 12,50,000/- to the wife immediately for her treatment – After the wife is cured or within six months which ever is earlier Family Court would take up the case along with the fresh application filed by the parties u/s. 13B for divorce by mutual consent. A B

Sureshta Devi vs. Om Prakash (1991) 2 SCC 25: 1991 (1) SCR 274 – referred to.

Indian Contract and Specific Relief Act by Pollock & Mulla 13th Edn; “*Digest of Hindu Law Volume II*”; *Digest of Hindu Law Volume-II* by Colebrooke – referred to. C

Case Law Reference D

1991 (1) SCR 274 referred to. Para 17

CIVIL APPELLATE JURISDICTION : Transfer Petition (Civil) No. 702 of 2015 E

Under Section 13(B) of Hindu Marriage Act, 1955.

Arun R. Pedneker (for Ms. Mukti Chowdhary) for the Appellant.

Vinay Navare, Keshav Ranjan, Gwen K. B., Abha R. Sharma for Respondent. F

The Judgment of the Court was delivered by

M. Y. EQBAL, J. 1. Heard learned counsel appearing for the parties and perused the records along with the affidavits and petitions. G

2. Admittedly, the marriage of the petitioner with the respondent was solemnized in April, 2010 according to Hindu H

A Vedic Rites. At the time of marriage, the respondent-husband
was a bachelor and the petitioner-wife was a divorcee. It was
a love marriage after both of them came in contact with each
other in October, 2006. In 2013, some misunderstanding
developed between the petitioner and the respondent as a
B result of which the petitioner left the house.

3. In 2015, the respondent-husband filed a suit for
dissolution of marriage by a decree of divorce under Section
13(1)(1a) of the Hindu Marriage Act on the ground that the
C petitioner-wife after solemnization of the marriage had
committed various acts of cruelty. Admittedly, the petitioner is
living in Hyderabad with her parents. The petitioner, therefore,
moved an application before this Court for transfer of divorce
suit pending before the Family Court Bombay to the Family
D Court at Hyderabad.

4. The transfer petition was listed before this Court on
28.08.2015, when, at the request of the counsel for the parties,
the matter was referred to Supreme Court Mediation Centre
E for amicable settlement. •Before the Mediation Centre, a
Settlement Agreement was filed on 26.10.2015. In terms of
the said Settlement Agreement, the respondent-husband
agreed to pay Rs. 12,50,000/- (Twelve Lakhs Fifty Thousand
only) towards full and final settlement as alimony, maintenance
F for past and future or any other claim of the petitioner. The
respondent-husband had agreed to pay the said amount of
Rs. 12,50,000/- (Twelve Lakhs Fifty Thousand only), by way of
Bank draft in the name of the Registrar, Supreme Court, which
shall be paid to the petitioner-wife at the time of passing of
G decree of divorce by mutual consent.

5. On 6th November, 2015, the case was again listed
along with the office report and Settlement Agreement. The
matter was adjourned to enable the parties to file appropriate
H application.

6. Consequently, an application was filed purported to A
be under Section 13B of the Hindu Marriage Act with a prayer
to treat the divorce petition pending before the Family Court,
Bombay as an application under Section 13B of the Act and
treat the present application as second motion and grant B
divorce by way of mutual consent.

7. In the said application it was mentioned that petitioner-
wife is suffering life threatening disease and urgently requires
funds for her medical treatment and also that she has to depend C
on herself for proper care.

8. On 17.11.2015, the case was adjourned at the request
of the petitioner-wife, to enable her to file additional documents
in support of her case that she is suffering with life threatening D
disease. In compliance thereof additional documents have
been brought on record.

9. Perusal of the document i.e. the medical certificate,
reveals that a lump in the breast was found which highly E
suggests malignancy. The doctors recommended for an
immediate surgery and chemotherapy ranging from 6 to 8
cycles of adjuvant. It is mentioned that approximate costs per
cycle will cost about Rs. 50,000/-.

10. From the above mentioned admitted facts, it is evident F
that the petitioner needs sufficient amount of money for the
treatment of breast cancer. Hence, it cannot be ruled out that
in order to save her life by getting money, she agreed for a
settlement of dissolution of marriage. On these facts, a G
question that came in our mind is as to whether the Court would
be justified in granting a decree for divorce on the basis of
settlement when the wife is suffering with breast cancer and is
in need of money for her treatment and can that be the
consideration for dissolution of marriage. H

A 11. Hindu marriage is a sacred and holy union of husband
and wife by virtue of which the wife is completely transplanted
in the household of her husband and takes a new birth. It is a
combination of bone to bone and flesh to flesh. To a Hindu
B wife her husband is her God and her life becomes one of the
selfless service and profound dedication to her husband. She
not only shares the life and love, but the joys and sorrows, the
troubles and tribulation of her husband and becomes an integral
part of her husband's life and activities. Colebrooke in his
C book "Digest of Hindu Law Volume II" described the status of
the wife thus:-

 "A wife is considered as half the body of her husband,
equally sharing the fruit of pure and impure acts:- whether
D she ascend the pile after him or survive for the benefit of
her husband, she is a faithful wife."

 12. Further Colebrooke in his book Digest of Hindu Law
Volume-II quoted the Mahabharata at page 121 thus:-

E "Where females are honoured, there the deities are
pleased; but where they are unhonoured there all religious
acts become fruitless."

F This clearly illustrates the high position which is bestowed
on Hindu women by the Shastric law.

G 13. From the study of Hindu Law and different religious
books, it cannot be disputed that after marriage law enjoins
the corresponding duty on the husband to look after her
comforts and not only to provide her food and clothes but to
protect her from all calamities and to take care of her health
and safety.

H 14. In the peculiar facts of the present case if we consider
the instant settlement, which is nothing but a contract to dissolve
the marriage, the Court has to satisfy itself that the contract is

legal and valid in the eye of law. From perusal of the facts of the case and the development which has taken place in the present case, it seems that the petitioner-wife agreed for divorce by mutual consent on the condition that the respondent-husband will pay her Rs. 12,50,000/- as full and final settlement. The petitioner-wife is suffering from such a disease which has compelled her to agree for the mutual consent divorce. The fact that petitioner-wife is ready for the mutual consent divorce after knowing about her medical condition raises a suspicion in our mind as to whether the consent obtained from the petitioner-wife is free as required by law for granting the decree of divorce by mutual consent.

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15. Section 13-B of the Hindu Marriage Act makes a provision of divorce by mutual consent, which reads as under:-

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“13B Divorce by mutual consent—

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

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(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are

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A true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

16. Section 23 casts a duty upon a Court to record its satisfaction before passing a decree in a suit or proceeding.

B Section 23(1)(bb) is also worth to be quoted hereinbelow:-

“23.Decree in proceedings :—

(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that—

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(b)

(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence.”

D 17. This Court elaborately discussed the aforesaid provisions in the case of **Sureshta Devi vs. Om Prakash**, (1991) 2 SCC 25, and observed thus:-

E “.....What is significant in this provision is that there should also be mutual consent when they move the court with a request to pass a decree of divorce. Secondly, the court shall be satisfied about the bona fides and the consent of the parties. If there is no mutual consent at the time of the enquiry, the court gets no jurisdiction to make a decree for divorce. If the view is otherwise, the court could make an enquiry and pass a divorce decree even at the instance of one of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent.”

G 18. If we consider the provisions of Indian Contract Act, it provides that consent is said to be free when it is not caused by “undue influence” as defined in Section 16 of the Act. The contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of H

the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

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19. One more doctrine is to be taken into consideration i.e. "Pre-existing duty doctrine". It is a principle under the Contract Act that states that if a party to a contract is under a pre-existing duty to perform, then no consideration is given for any modification of the contract and the modification is therefore voidable. In the 13th edition of the Pollock & Mulla Indian contract and Specific relief Act in Vol. 1, it is mentioned at page 101 about the Pre-existing obligation under law which provides that:-

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"The performance of what one is already bound to do, either by general law or by a specific obligation to the other party, is not a good consideration for a promise; because such performance is no legal burden to the promise, but rather relieves him of a duty. Neither is the promise of such performance a consideration, since it adds nothing to the obligation already existing."

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20. We can apply this principle in the present case. As discussed above, it is a duty of the respondent-husband to take care of the health and safety of the petitioner-wife. In the instant case also it is a primary duty of the husband only to provide facilities for the treatment of the petitioner. This is a pre-existing duty of the husband, provided the husband has sufficient means and he is diligently doing his part in taking care of her. In the present case, by the settlement agreement the respondent-husband is promising to do something which he is already duty bound, is not a valid consideration for the settlement.

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21. In the peculiar facts and circumstances of the case, we, therefore, pass the following order:-

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A (i) The transfer petition for the transfer of matrimonial suit being petition No.A-642 of 2015 pending before the Family Court at Bombay, Maharashtra to Family Court at Hyderabad is allowed. The petition is ordered to be transferred accordingly. The transferor court shall forthwith transmit the record of the

B aforesaid case to the transferee court.

(ii) The respondent-husband shall pay a sum of Rs.Five Lacs (Rs.5,00,000/-) out of Rs.12,50,000/- to the petitioner-wife immediately within a week for her treatment and meeting other

C medical expenses.

(iii) After the petitioner is fully cured from the disease or within six months whichever is earlier, the Family Court at Hyderabad, where the divorce petition is ordered to be transferred, shall

D take up the case along with a fresh application that may be filed by the parties under Section 13B for divorce by mutual consent. After compliance of all the formalities, the Family Court at Hyderabad shall dispose of those petitions in accordance with law after recording its satisfaction and giving opportunity of hearing to both the parties.