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USHA UDAY KHIWANSARA

v.

UDAY KUMAR JETHAMAL KHIWANSARA

(Civil Appeal No. 6861 of 2018)

B

JULY 17, 2018

**[ABHAY MANOHAR SAPRE AND  
UDAY UMESH LALIT, JJ.]**

C *Matrimonial laws: Dissolution of marriage – In exercise of power u/Art.142 of the Constitution – On facts, grant of ex parte divorce decree in favour of husband by the High Court – Challenge to, by the wife – On appeal, held: Parties have been living separately for last more than a decade and there is no chance of both coming together to continue their marital life, and no issue was born out of wedlock – Furthermore, wife has been ailing for long time and living with her relatives, and has no independent income of her own, whereas her husband is quite resourceful person – In order to ensure that the parties may live peacefully in future, a quietus must be given to all litigations between the parties – In view of the consensus arrived at between the parties, issuance of direction to the husband to pay the wife Rupees thirty lakhs towards permanent alimony and Rupees five lakhs towards medical expenses – Thus, in exercise of power u/Art. 142, marriage is dissolved subject to the fulfillment of the said conditions – Hindu Marriage Act, 1955 – Constitution of India – Art. 142.*

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*Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558 : [2006] 3 SCR 53 ; Sanghamitra Ghosh v. Kajal Kumar Ghosh (2007) 2 SCC 220 : [2006] 9 Suppl. SCR 156 – referred to.*

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**Case Law Reference**

**[2006] 3 SCR 53                      referred to                      Para 13**

**[2006] 9 Suppl. SCR 156              referred to                      Para 14**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6861 A  
of 2018.

From the Judgment and Order dated 14.08.2014 of the High Court  
of Judicature at Bombay in Family Court Appeal No. 155 of 2007.

Ms. Anagha S. Desai, Satyajit A. Desai, Varun Mathur, Advs. for B  
the Appellant.

Ms. Meenakshi Arora, Sr. Adv., Jay Kishor Singh, Anand Landge,  
Kaushik Kulkarni, Advs. for the Respondent.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. Delay condoned. C

2. Leave granted.

3. This appeal is filed by the appellant-wife against the final  
judgment and order dated 14.08.2014 passed by the High Court of  
Judicature at Bombay in Family Court Appeal No.155/2007 whereby D  
the High Court allowed the Family Court Appeal filed by the Respondent-  
husband.

4. Few facts need to be mentioned to appreciate the short issue  
involved in the appeal.

5. The appellant is the wife whereas the respondent is the husband. E  
The appellant and the respondent married on 07.02.1992. Unfortunately,  
due to various reasons, their married life was not cordial which eventually  
led to filing of divorce petition (486 of 2004) by the respondent (husband)  
in the year 2004 against the appellant (wife) in Pune Family Court.

6. The respondent sought divorce *inter alia* on the ground of F  
cruelty and desertion against the appellant. The appellant denied the  
allegations of cruelty/desertion and contested the petition by joining issues.

7. By order dated 19.06.2007, the learned Family Judge dismissed  
the respondent's divorce petition. He held that respondent failed to make  
out any case of cruelty and desertion on the part of the appellant so as to G  
entitle him to claim a decree of divorce.

8. The respondent felt aggrieved, filed first appeal (155/2007)  
before the High Court at Mumbai. By impugned order, the High Court

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A allowed the respondent's appeal and set aside the order of the Family Judge and in consequence allowed the respondent's divorce petition by granting a decree of divorce in his favour on the ground of desertion. It is against this order of the High Court; the wife (appellant herein) felt aggrieved and filed the present special leave to appeal in this Court.

B 9. We have heard the learned counsel for the parties and perused the record of the case.

10. It is not in dispute that the High Court had allowed respondent's (husband's) appeal and passed the impugned order granting a decree of divorce without hearing the appellant (wife). In other words, none  
C appeared for the wife before the High Court in the appeal, which was, heard *ex-parte*. Such hearing of the appeal, which eventually resulted in passing an adverse order against the wife and dissolving the marriage undoubtedly caused prejudice to the rights of the appellant-wife.

11. Since the appellant wife thus stood denied of a chance to  
D represent her case before the High Court, the logical consequence would normally have been to set aside the judgment and order under appeal and remit the matter for fresh consideration. At this juncture the learned counsel appearing for both parties submitted that they were willing to part company on a note which would be mutually acceptable to either party. We see force in the submission made by both the learned counsel  
E and rather than relegating them to fight another round of battle, we consider the matter in that perspective.

12. It is not in dispute that the parties have been living separately for last more than a decade. It is also clear that there is absolutely no chance of both coming together to continue their marital life. It has also  
F come on record that there is no issue born out of wedlock. It has also come on record that appellant (wife) has been ailing for long time and living with her relatives in Wardha. It has also come on record that the appellant (wife) has no independent income of her own and she is wholly dependent upon her family members. It has also come on record that  
G the respondent (husband) is quite resourceful person having his own or his family bungalow in a posh colony (Lakaki Road) in Pune where he is living.

13. In *Naveen Kohli v. Neelu Kohli*<sup>1</sup> the husband had filed petition seeking divorce on the ground of cruelty on part of wife. While the

H <sup>1</sup>(2006) 4 SCC 558

matter was pending in the trial court, efforts were made for amicable settlement, without any success. Finding that there was no cordiality left between the parties to live together the trial court ordered dissolution of marriage and directed the husband to deposit Rs.5 lakhs towards permanent maintenance of the wife. The appeal at the instance of the wife having been allowed, the husband approached this Court by filing an appeal. The observations of this Court in paragraphs 86 and 90 are relevant for our purposes and the same are quoted hereunder:

“**86.** In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct *de jure* what is already defunct *de facto*. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

**90.** Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955. In the extraordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs 25,00,000 (Rupees twenty-five lakhs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs 5,00,000 (Rupees five lakhs with interest) deposited by the appellant on the direction of the trial court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs 20,00,000 (Rupees twenty lakhs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant.”

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A 14. In *Sanghamitra Ghosh v. Kajal Kumar Ghosh*<sup>2</sup> it was observed in paragraphs 18, 19, 20 and 21 as under:

B “18. In the instant case, we are fully convinced that the marriage between the parties has irretrievably broken down because of incompatibility of temperament. In fact there has been total disappearance of emotional substratum in the marriage. The matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, therefore, the public interest and interest of all concerned lies in the recognition of the fact and to declare defunct *de jure* what is already defunct *de facto* as observed in *Naveen Kohli case*<sup>1</sup>.

C 19. In view of peculiar facts and circumstances of this case, we consider it appropriate to exercise the jurisdiction of this Court under Article 142 of the Constitution.

D 20. In order to ensure that the parties may live peacefully in future, it has become imperative that all the cases pending between the parties are directed to be disposed of. According to our considered view, unless all the pending cases are disposed of and we put a quietus to litigation between the parties, it is unlikely that they would live happily and peacefully in future. In our view, this will not only help the parties, but it would be conducive in the interest of the minor son of the parties.

E 21. On consideration of the totality of the facts and circumstances of the case, we deem it appropriate to pass the order in the following terms:

F (a) the parties are directed to strictly adhere to the terms of compromise filed before this Court and also the orders and directions passed by this Court;

G (b) we direct that the cases pending between the parties, as enumerated in the preceding paragraphs, are disposed of in view of the settlement between the parties; and

(c) all pending cases arising out of the matrimonial proceedings including the case of restitution of conjugal rights and guardianship case between the parties shall stand disposed of and consigned to

H <sup>2</sup>(2007) 2 SCC 220

the records in the respective courts on being moved by either of the parties by providing a copy of this order, which has settled all those disputes in terms of the settlement.” A

15. In our considered view, in order to ensure that the parties live peacefully in future a quietus must be given to all litigations between the parties. Such an approach would be consistent with that adopted by this Court in the aforesaid matters. Consistent with the broad consensus arrived at between the parties, we direct:- B

“(i) On making a payment of Rs.30,00,000/- (Rupees thirty lakhs) by the respondent-husband towards permanent alimony to the petitioner-wife, by way of a demand draft drawn in favour of the petitioner –wife, the marriage between the parties shall stand dissolved. The demand draft shall be handed over to Ms. Anagaha Desai, learned counsel for the petitioner who shall transmit the same to the petitioner. C

(ii) The respondent shall make the aforesaid payment within one month from today. D

(iii) All the allegations/findings recorded by the High Court against both the parties including the Writ Petition (Crl) No.631 of 2012 pending in the High Court of Bombay, Nagpur Bench are hereby quashed.” E

16. We, thus, accept the terms of settlement suggested by learned counsel appearing for both parties. In view of the peculiar facts and circumstances of this case, we also consider it appropriate to exercise our power under Article 142 of the Constitution and declare dissolution of marriage subject to the fulfillment of the aforesaid conditions. We also deem it appropriate to direct the respondent husband to make a further payment of Rs.5 lakhs (Rupees five lakhs) by way of gesture of goodwill and as his contribution towards the medical expenses which the wife has incurred uptill now. This amount shall be paid by way of Demand Draft along with the above-mentioned sum of Rs.30 lakhs. F

17. The appeal stands disposed of in aforesaid terms. No Costs. G