

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO. 702 OF 2015

Vennangot Anuradha SamirPetitioner

versus

Vennangot Mohandas Samir ...Respondent

ORDER

M.Y. EQBAL, J.

Heard learned counsel appearing for the parties and perused the records along with the affidavits and petitions.

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

6. Consequently, an application was filed purported to 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 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 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 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 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 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 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.

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 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 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 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:-

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

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

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.

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.

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

“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.

(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 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.

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—

(a)

(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.”

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

“.....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.”

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 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.

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:-

“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.”

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.

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

(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 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 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 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.

.....J.
(M.Y. Eqbal)

.....J.
(C. Nagappan)

New Delhi
December 02, 2015

JUDGMENT

SUPREME COURT OF INDIA



JUDGMENT