

(2009) 01 SC CK 0172

In the Supreme Court Of India

Case No : Writ Petition (Civil) No. 256 of 2008

Aparna Mehta Kapur and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 16-01-2009

Acts Referred:

Constitution of India, 1950 — Article 142, 32
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 13B
Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2009) 17 SCC 591

Hon'ble Judges : R. M. Lodha, J;D. K. Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By this writ petition under Article 32 of the Constitution of India, the petitioner-wife seeks directions to: (i) respondent No. 2-husband to settle all the pending matters amicably in the interest of the minor child, petitioner No. 2 herein and (ii) the Civil Judge (Sr. Division), Gautam Budh Nagar. Noida to dispose off matrimonial Case No. 637/2005 Aparna Mehta Kapur v. Sanjay Kapur expeditiously.

2. Although having regard to the nature of the reliefs prayed for by the petitioners, perhaps this petition was not the proper remedy but realising that dismissal of the petition would result in procrastination of great strain to the spouses because of pendency of several cases against each other and the trauma their 13 year old daughter was going through, we entertained the petition.

3. However, since petitioner No. 1 was appearing in person, we requested Ms. Kamini Jaiswal, Advocate to assist us in the matter. While issuing notice to the respondents on 11th August, 2008, it was directed that respondent No. 2 (Husband) shall remain present in Court on the next date of hearing. When the matter was taken up for consideration on 29th September, 2008, it was felt that

it would be appropriate if the case is referred to the Mediation Centre at Delhi High Court and an attempt is made to resolve the disputes between the parties.

4. Pursuant to the said order, the parties appeared before the learned Mediator, who interacted with the parties on several dates and, ultimately, vide her report dated 11th December, 2008, apprised this Court about the progress in those proceedings. It was reported that though substantial progress had been made in settlement of disputes between the parties, there were still some areas of concern which were yet to be addressed. Nevertheless, as per the report, a draft settlement agreement had been circulated to the parties and their counsel for their consideration. Ultimately, the learned Mediator filed her final report on 5th January, 2009, reporting that even though a final settlement between the parties had been arrived at, but the parties had certain apprehensions on the settlement in regard to the visitation rights to the father which could be cleared with the intervention of this Court. An unsigned copy of the settlement agreement between the parties was filed with the report.

5. On 7th January, 2009, when the matter came up for consideration of the final report submitted by the learned Mediator, learned Counsel for the parties stated that the terms of settlement, incorporated in the draft settlement agreement, dated December 28, 2008, were acceptable to their respective clients, and they would ensure that all these are adhered to in letter and spirit. Learned Counsel sought time to file a proper affidavit/document setting out the consent terms so that the matter could be disposed of in terms thereof, which has been done.

6. We have heard learned Counsel for the parties.

7. In view of the fact that an amicable settlement has been arrived at between the contesting parties, it is unnecessary to advert to the facts giving rise to the filing of the present petition. What needs to be noted is that with the untiring efforts of the learned Mediator, the wife (petitioner No. 1) and the husband (respondent No. 2) have resolved their differences amicably and have filed a signed application praying that this Court may be pleased to record the settlement and dissolve the marriage between them by a decree of divorce by mutual consent; the period u/s 13B of the Hindu Marriage Act, 1955 (hereinafter for short 'the Act') be dispensed with and various cases initiated by them against each other may be quashed. The application is signed by both the said parties and is supported by their affidavits. Both the parties, are present in Court and have been identified by their counsel. They re-affirm that they have entered into the settlement without any pressure or coercion from any side.

8. We have perused the terms of the settlement. It seems to be bona fide and therefore there is no impediment in accepting the same to put an end to acrimonious disputes between the parties.

9. Accordingly, in exercise of our jurisdiction under Article 142 of the Constitution we allow I.A. No. 1/2009; take the said settlement on record; dispense with the notice period u/s 13B of the Act and pass a decree of divorce for dissolution of

marriage solemnised between petitioner No. 1 and respondent No. 2 by mutual consent. The said parties shall remain bound by the terms of the settlement. We further direct that all pending cases/complaints, particularly arising out of FIR No. 221/2003 (under Sections 498A, 323, 504, 506/IPC and 3/4 of the Prohibition of Dowry Act 1961), Case Crime No. 263/2003, P.S. Section 39, Noida) shall stand quashed.

10. Before parting with the case, we wish to place on record our appreciation for the efforts made by Ms. Sadhana Ramchandran, the learned Mediator; Ms. Kamini Jaiswal, the learned Amicus Curiae; Mr. Kirti Uppal and Mr. Jatinder Mohan Sharma, learned Counsel for the parties, without whose active and meaningful cooperation perhaps even the second attempt for settlement would not have been possible.

11. The writ petition stands disposed of in the above terms.