

(2011) 08 KAR CK 0060
In the Karnataka High Court
Case No : WPHC No. 128 of 2011

Smt. Jahnvi Mishra

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Hindu Marriage Act, 1955 — Section 13 B, 13 B (2)

Citation : (2011) 08 KAR CK 0060

Hon'ble Judges : V. Shri Appa Rao, J;Ananda, J

Bench : Division Bench

Advocate : H.E. Basavaraj, for the Appellant; H.S. Chandramouli, Spp for R1 to R3 and Sri. H.V. Nagarja Rao, Advocate for R4 and R5, for the Respondent

Judgement

1. The Petitioner alleges that her husband 4th Respondent namely Anuj Mishra has illagely detained her child namely, Master Gourav Mishra (detenue). This Court after noticing several differences and also observing inclination of detenue towards his father had referred the parties to the Counselling Center. After several rounds of counselling, the parties have survived at a sattlement and they have filed a joint memo reading as hereunder:

The fourth Respondent in the above proceedings is the contesting Respondent The petition arises out of a family dispute between the Petitioner and: the fourth Respondent who is the husband of the Petitioner With the intervention of well-wishes and relatives, the parties have agreed to settle the entire dispute, including the custody of the minor child Master Gaurav Mishra, under the following terms and conditions:

1. The Petitioner and the fourth Respondent have agreed to file a consent divorce petition u/s 13-B of the Hindu Marriage Act, 1955 before the Family Court at Bangalore seeking consent decree and divorce of their marriage dated 29.9.2006 and further seek dispensation of the waiting period of six months as contemplated under the Act in view of the complications involved in the matter. Both the parties agree that the said, petition shall be filed" on 19.8.2011.

2. Both the parties agree that the Petitioner shall withdraw all criminal and civil proceedings against fourth Respondents forthwith and shall not initiate any such proceedings against the fourth Respondent and/or any of his family members in future.

3. The fourth Respondent Dr. Anuj Mishra agreed to hire, within a period of three months from now, a two bed room apartment in a decent locality at New Delhi exclusively for the use of the Petitioner and her daughter Ananya Mishra, now aged about 12 years and also for her son Master Gaurav Mishra, at his own cost. The cost of searching, payment rental advance and monthly rental shall be made by the fourth Respondent Dr. Anuj Mishra. Immediately thereafter the Petitioner and her daughter Ananya Mishra shall move over to the said apartment at New Delhi and live independently. The fourth Respondent Dr. Anuj Mishra shall pay a monthly maintenance amount of Rs. 25,000 (Rupees only five thousand only) on or before the 5th day of every month, to the Petitioner during her stay at New Delhi and continue to pay the school fee and other educational expenses involved in respect of their son Master Gaurav Mishra. He shall also bear the educational expenses of his daughter Ananya Mishra whom he has adopted as his own daughter.

4. The fourth Respondent Dr. Anuj Mishra shall make all endeavor to get an employment to the Petitioner at New Delhi at the earliest. If the Petitioner succeeds in getting an employment fetching and above Rs. 25,000.00 per month, then the fourth Respondent shall not be liable to make payment of the monthly maintenance of Rs. 25,000.00 and the monthly rental as agreed above. However if such an employment fetches anything less than Rs. 25,000.00, the difference in the amount shall be paid every month by the fourth Respondent to the Petitioner till such time she gets an employment fetching minimum of Rs. 25,000.00 or above.

5. It is specifically agreed to between the parties that the Petitioner shall not voluntarily and without any sufficient reason leave the employment to force the fourth Respondent to make payment of the monthly maintenance. If she voluntarily and without sufficient cause resigns or abandons the employment, the fourth Respondent shall not be liable to make payment of the monthly maintenance to her.

6. It is further agreed to between the parties that the Petitioner shall not move out of New Delhi at least for a minimum period of five years for any reason whatsoever. However if she intends to move out of New Delhi

within a period of five years for any reason whatsoever, then she shall surrender the custody of the minor son Master Gaurav Mishra to the fourth Respondent reserving only visiting rights.

7. The Petitioner and the fourth Respondent had jointly purchased two separate apartments at Bangalore and one such apartment is already agreed to be transferred exclusively in the name of the Petitioner. It is submitted that both the Petitioner and the fourth Respondent had made investment in the second apartment

developed by Godrej Developers at Bellary Road. Since the fourth Respondent could not pay the monthly installments for over 5-6 months the Petitioner's mother has been payment of the monthly installments to the Bank. In view of the settlement between the parties, it is specifically agreed to that the Petitioner has agreed to return the entire investment and further payments made by the fourth Respondent amounting to Rs. 15,43,885.00 (Rupees fifteen lakh forty three thousand and eight hundred and eight five only) to him. The said sum of Rs. 15,43,885.00 (Rupees fifteen lakh forty three thousand and eight hundred and eight five only) shall, be adjusted by the Petitioner Dr. Jahnavi Mishra towards the initial rental deposit to be made for securing the apartment on rent by the fourth Respondent Dr. Anuj Mishra and towards the future monthly rental, monthly Rs. 25,000.00 agreed to be paid by the fourth Respondent to the Petitioner and the educational expenses of their daughter ananya Mishra. Thus, the fourth Respondent will not be required to make any monthly payment to the Petitioner till the entire sum of Rs. 13,43,885.00 (Rupees fifteen lakh forty three thousand and eight hundred and eight five only) is adjusted towards the expenses as stated supra. Consequently, the property will be transferred to the Petitioner.

8. The Petitioner shall be at liberty to move to her new residence at New Delhi any time after an independent apartment is rented out for her by the fourth Respondent and till such time, the custody of the minor child Master Gaurav Mishra shall continue to be with the fourth Respondent. Thereafter, the custody of the minor son Master Gaurav Mishra shall be handed over to the costody of the Petitioner by reserving the visiting rights every day, so that the child gets accustomed to the custody of the mother. The fourth Respondent shall be entitled to drop the child to the school and pick him up from the school and drop him back in his residence during his stay at New Delhi for which the Petitioner has no objection, Further, during holidays like summer holidays, Dassra holidays and Christmas and other holidays, the Petitioner shall share custody of the Minor Child Master Gaurav equally with the fourth Respondent.

9. This compromise shall supersede all other terms of comprises entered into between parties earlier.

10. In vies of the peculiar facts and circumstances of the case, the parties pray that this Hon"ble Court be pleased to take the compromise on record and direct the Family Court to dispense with the waiting period of six months as contemplated u/s 13-B(2) of the Hindu Marriage Act, 1955 and dispose off the petition to be filed by the parties at the earliest. Wherefore, the Petitioner and the fourth Respondent most humbly pray that this Hon"ble Court may be pleased to take this Hon"ble Court may be pleased to take this compromise on record and dispose of the same, in the interest of equity and justice.

2. The Petitioner submits that fourth Respondent shall not remove the detenue out of this Country without the permission of Petitioner. The fourth Respondent would submit that he would not remove the child Kumar Gaurav Mishra out of

this Country without the permission of Petitioner.

3. The compromise entered into between the parties, which is extracted hereinabove, is accepted

The Petition is disposed of in terms of compromise arrived at between the parties.