SUPREME COURT OF INDIA

Ravi Singhal

Vs.

Manali Singhal

C.A.No.6955-6956 of 2001

(D.P. Mohapatra and K.G. Balakrishnan JJ.)

01.10.2001

JUDGMENT

K.G. Balakrishnan, J.

1. Leave granted.

2. These appeals are filed against judgment and order dated 28.7.2000 passed by the Division Bench of the Delhi High Court in FAO (OS) No. 9 of 1999 and order dated 24.11.2000 in R.A. No. 1419 of 2000, preferred against an interim order dated 28.10.1998 passed earlier by a learned Single Judge. The appellants herein are defendants in Suit No. 2583 of 1997 on the file of original jurisdiction of the High Court of Delhi, having been filed by the respondents herein for the enforcement of an alleged Family Settlement entered into between the parties on 4.11.1994. The facts in brief are as under.

3. The first appellant, Ravi Singhal, married the first respondent on 10.2.1989. The second respondent is their daughter born on 18.3.1991. After the marriage, the first respondent was staying with the appellants in her matrimonial home at Vasant Vihar in New Delhi. It seems that the marriage ran into rough weather by 1994. The first respondent had to accompany her mother for treatment abroad and she returned with her mother to India on 31.10.1994 and according to the first respondent, when she arrived in Delhi she was informed by the first appellant that he did not want to continue the marital relations. The first appellant, on the other hand, would say that on arrival from abroad the first respondent went straight to her parents' house. There was no possibility of any reconciliation between the parties and the relationship continued to be sour. The first respondent along with second respondent left the matrimonial home at Vasant Vihar and started living with her parents. It appears that there were negotiations between the parties to arrive at some settlement and on 4.11.1994, a written agreement was entered into between the parties. All the appellants herein signed the agreement. A true copy of the agreement is produced as Annexure P-7. The appellants do not dispute the genuineness of the agreement. It has been contended by the first appellant in the written statement filed by him before the High Court that the agreement entered into on 4.11.1994 is void and not liable to be specifically enforced as the appellants had signed the same under duress and not with free consent. According to the appellants, the mother of the

first respondent was brought to India on 31.10.1994 and as she was critically ill and she was admitted in All India Institute of Medical Sciences and the first respondent insisted the appellants to sign the Settlement Deed as she wanted to show the signed agreement and satisfy her mother that every dispute was settled. According to the first appellant, the agreement signed by him on 4.11.1994 was not intended to be acted upon and it was merely a paper transaction.

4. As per the alleged agreement, the appellants are bound to discharge certain obligations. The nomenclature of the agreement is shown as "Memo of Settlement" and as per clause (1) of the agreement, the appellants are to provide a residential house in South Delhi to the respondents while clause (2) says that the appellants have to provide a sum of Rs.40,000/- per month to the respondents, free of income tax, for the maintenance and upbringing of the daughter and also for the maintenance of the first respondent. There are other clauses in the agreement by which the appellants are required to meet expenses for the education of the second respondent and the first appellant is to provide expenses for a vacation abroad once a year for a period of thirty days to the respondents. The first appellant is also to meet the medical expenses of the respondents and to provide a car to them. As regards custody of the second respondent, it was agreed that she would stay with the mother.

5. The respondents filed a suit in 1998 alleging that the appellants failed to discharge their obligations under the Memorandum of Settlement and in the suit the Memorandum of Settlement was sought to be specifically enforced. The respondents moved for an interim direction and the learned Single Judge, by an elaborate order, held that the plaintiff-respondents were entitled to get interim maintenance @ Rs.40,000/- per month. The appellants herein were also directed to clear the arrears of maintenance from January 1, 1997 to September 30, 1998 @ Rs.40,000/- per month and the total amount thus payable was Rs.8,40,000/-. The appellants were also directed to deposit the school fee and other charges in connection with the education of the second respondent. By this interim order, the appellants were also directed to provide a house to the respondents in terms of clause (4) of the Memo of Settlement. Some other prayers sought for by the respondents were declined to be granted as interim arrangement for the respondents.

6. This order was unsuccessfully challenged by the appellants before the Division Bench. The Division Bench elaborately considered the matter and held that no interference was called for. The interim direction passed by the learned Single Judge was directed to be complied with by the appellants. As stated above, this order is challenged before us.

7. We heard the matter at great length. The counsel on either side brought to our notice series of decisions relevant to the points raised by the parties in the proceedings, but we do not propose to go into such disputed questions as the appeals now before us are only against an interim order. Any observation made by this Court may have great persuasive effect with regard to the matter which may be agitated finally in the suit.

8. The appellants contended that the suit itself is not maintainable and the remedy, if at all open to the respondents, is to file an application under the provisions of the *Hindu Adoptions*

& Maintenance Act, 1956 [for short, "the Act"]. It was argued that an order for interim maintenance could only be passed under Section 23 of the Act. It is also argued that the Memorandum of Settlement is void and is opposed to public policy and that there cannot be any judicial separation under an agreement, except in accordance with the provisions of the Hindu Marriage Act.

9. The counsel for the respondents, on the other hand, contended that there could be a Family Settlement and it is not against any public policy. Our attention was also drawn to Section 25 of the Act where reference is made to agreements entered into by the parties regarding the amount of maintenance.

10. The counsel on either side also drew our attention to various decisions rendered by this Court and various other High Courts. We do not propose to refer to those decisions as most of them have been considered by learned Single Judge as well as by the Division Bench in the impugned judgment.

11. The counsel for the appellants vehemently contended that the Memorandum of Settlement was signed by the appellants under special circumstances and the first appellant is financially not in a position to meet the alleged obligations under the agreement. The counsel argued that by the impugned judgment, the plaintiff-respondents have been given virtually the entire relief sought for in the suit and the appellants are unduly burdened with financial liabilities which are incapable of being performed by the first appellant. We notice the force in this contention, but at the same time it is to be borne in mind that this is only an interim order passed by the court in exercise of the discretionary power vested in it in such family proceedings. Further, the interim arrangement made under the order only covers payment of interim maintenance, arrears and current, deposit of school fees of the child and providing a separate residence From the impugned judgment, it is clear that there was a long and elaborate debate by the counsel on either side regarding the financial capability of the appellants. Having regard to the fact that the order under challenge is an interim order, without expressing any opinion on merits we would only say that the discretionary power exercised by the court cannot be said to be perverse or irrational so as to warrant interference by this court. But at the same time, the appellants have raised certain serious contentions which require consideration at the hands of the learned Single Judge before whom the matter would come up for trial. We only wish that the suit may have an expeditious trial and the same be finally disposed of. The parties also, with the help of friends and well-wishers shall explore the possibility of an amicable settlement and bury the hatchet once and for all. We make it clear that any observation made by this Court or the High Court shall not have any persuasive effect when the matter is finally considered by the Court.

12. The appeals are disposed of accordingly with no order as to costs.