

SUPREME COURT OF INDIA

Sushila Kumari

Vs.

Col.Satish Chander

Crl.A.No.260-261 of 2017

(Kurian Joseph and A.M.Khanwilkar,JJ.,)

08.02.2017

JUDGMENT

Kurian Joseph,J.,

SLP(Crl.)No.9773-9774 of 2015

1. Leave granted.
2. Heard Sh. Narender Hooda, learned senior counsel appearing for the appellant and Mr. Rakesh Dahiya, learned counsel appearing for the respondent.
3. The appellant has challenged the order dated 26.08.2015 passed by the High Court of Punjab and Haryana at Chandigarh in CRR No. 1654 of 2012 (O&M) and CRR (F) No. 151 of 2013 (O&M). Both petitions were taken up and disposed of by a common Judgment.
4. The short impugned Judgment is reproduced as under:-

"On the intervention of the Court, Lt. Col. Satish Chander along with his counsel Mr. Aman Pal, Advocate as well as Smt. Sushila Kumari along with her counsel Mr.Babbar Bhan, Advocate, who are present in Court, have resolved their dispute whereby Lt. Col. Satish Chancier undertakes to pay Rs. 21,000 per month w.e.f. today as maintenance which shall be credited to the bank account of Smt. Sushila Kumari every month through the salary/pension account of Lt. Col. Satish Chandler for which he would issue necessary instructions to the authority concerned for regularly crediting the amount. Lt. Col. Satish Chander further undertakes that after every five years w.e.f. today he will increase the amount of maintenance by Rs.2,000 automatically. Both the parties undertake that they shall withdraw all the litigation pending against each other except the divorce petition and shall not initiate any other fresh litigation against each other arising out of this matrimonial dispute. It has been further agreed that out of the total arrears amounting to Rs. 9,21,000 till August, 2015, an amount of Rs. 3,56,000 which is still unpaid shall be paid by Lt. Col. Satish Chander to Smt.Sushila Kumari within a period of six months in equal installments. The parties shall be bound by this settlement. In the light of statements made before the Court by both the sides, the present petitions stand disposed of."

5. According to the appellant, the facts, as recorded by the High Court in the impugned Judgment, were factually incorrect and there was no agreement As recorded by the Court as far as withdrawal of the cases are concerned. The agreement was only to the schedule of payment of arrears and enhancement of the maintenance by Rs. 1000/-. In that view of the matter, the appellant filed an application for recall of the impugned order, being Criminal Misc. Application No. 30993 of 2015. At paragraph 6 of the said application, it has been averred as follows :-

"That this Hon'ble Court in the order/judgment has mentioned that both the parties undertake to withdraw all their litigation pending against each other except the divorce petition and shall not initiate any other fresh litigation against each other

arising out of this matrimonial dispute. It is respectfully submitted that the petitioner along with her Advocate who was present in the Court vehemently opposed to withdraw any pending cases before the Court. The Hon'ble Court had asked the petitioner to sign the agreement but the petitioner refused to do so still this Hon'ble Court recorded in the judgment that both the parties undertake to withdraw all pending cases which is far from the facts."

6. It is further stated at paragraph 7 that four criminal cases pending between the parties cannot be withdrawn.Paragraph 7 of the application is reproduced below :-

"7. That the pending cases between the petitioner and Col.Satish Chander, if gone into their details, cannot be withdrawn under the circumstances mentioned below:-

(a) That the Bhiwani Family Court allowed the marriage expenses for Rs.4,00,000/- (Rupees four lacs) on 12.01.2015 in 2002/2012 in Sneh Lata Vs. Col.Satish Chander, the execution petition Exe/0000340/2015 is pending before Hon'ble Family Court, Bhiwani. Therefore at this stage of its execution how petitioner can be forced to withdraw the execution petition since all the expenses made by the petitioner for her daughter marriage was after obtaining the loans from relations and friends and the same is required to be paid back to them by the petitioner.

(b) That the petitioner as well as Col.Satish Chander have filed appeal before this Hon'ble Court for increase of the grant of marriage expenses therefore, the same cannot be withdrawn as FAO No.3676 of 2015 and FAO No.4356 of 2015 are pending before this Hon'ble Court.

(c) That the petitioner was granted maintenance on 06.3.2012 for Rs.20,000/- P.M., the petitioner has filed a suit under section 127 CrI.P.C. for enhancement of maintenance because it is not possible to live in a minimum required means by Award of Rs.20,000/- which includes her house rent also therefore, the same can not be withdrawn.

(d) That the petitioner was left with no means by Col.Satish Chander when they both were residing at Flat No.4-C Sivsakti Apartment Plot No.10 Sec.10, Dwarka, New Delhi. Col.Satish Chander while deserting the petitioner took away his CSD Canteen Card, LPG Gas connection papers, ATM Card along with all the cheque books. Col.Satish Chander in collusion with the house owner got the electricity and water connection dis-connected specially when her daughter was appearing for M.Tech examination.** Finally when the petitioner had gone out of flat and her daughter had gone to college, Col.Satish Chander got the house locked by the house owner by putting another lock over the lock of petitioner already put by the petitioner. The petitioner was not allowed to enter in the society premises of house thus her all belonging except the clothes she was wearing was under the control of house owner. This was done by help and advise of Col.Satish Chander, therefore, the petitioner filed a case for domestic violence against Col.Satish Chander which is on its final stage of hearing and can not be withdrawn it under any circumstances.

(e) Therefore despite the facts mentioned above this Hon'ble Court has mentioned that both the parties undertake to withdraw the pending cases which was never agreed at all the endorsement made on this issue needs to be recalled by this Hon'ble Court."

7. Hence, at paragraph 11 of the application, the appellant prayed as follows :-

"11. That this Hon'ble Court has committed grave error of law and facts while coming to the conclusion and passed the judgment dated 26.08.2015, which is apparently a legal error on the face of it which has resulted into a grave miscarriage of justice for the applicant and same is to be rectified by this Hon'ble Court by taking cognizance of the application and to meet the end of justice in furtherance of doing complete justice."

8. The said application was taken up by the High court on 23.09.2015, when the High Court passed the following order:-

"Heard. No ground is made out for recalling of the order dated 26.08.2015 passed by this Court. The application stands dismissed with special costs of Rs. 10,000/- to be paid to the High Court Legal Service Committee. "

9. Having regard to the averments made in the application for recall, it is fairly clear that it cannot be said that there is no ground made out for recalling the order dated 26.08.2015. Mr. Babbar Bhan, learned counsel, who appeared for the appellant before the High Court, has also filed an Affidavit before this Court, supporting the averments in the application, which is extracted above.

10. Since we propose to remit the review applications to the High Court, we refrain from making any further observation at this stage. The order dated 23.09.2015 is set aside and CRM No. 30993 of 2015 in C.R.R.(F) No. 151 of 2013 is remitted to the High Court.

11. We request the High Court to consider the recall application on merits and pass appropriate orders therein in accordance with law. In order to avoid further round of litigation on an ancillary aspect, we also make it clear that even if the High Court finds that the learned advocate had given the consent, the application may be considered as one filed for relieving the appellant from the undertaking given by the counsel.

12. With the above observations and directions, the appeals are disposed of.