

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

FIRST APPEAL No 3396 of 1997

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PRITIBEN D/O NAVINCHANDRA BHAVSAR  
VERSUS  
ASHESH AMRATLAL BHAVSAR

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Appearance:

MR RAJESH B DESAI for Petitioner  
MR SURESH S PATEL for Respondent No.1

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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Decision : 22/05/2001

C.A.V.JUDGMENT

#. The wife, the appellant herein, by this first appeal under section 28 of Hindu Marriage Act, 1956 is praying for quashing and setting aside the judgment and decree

dated 31st July, 1997, made by City Civil Court at Ahmedabad in H.M.P. No. 205 of 1994. Under the decree aforesaid, the marriage of the petitioner and the respondent was dissolved w.e.f. 31st July, 1997 by a decree of divorce. This first appeal was dismissed for default but now it has been restored.

#. The facts of the case need not be stated in detail for the reason that the parties have arrived at a consent terms and matter has been settled and deed of understanding i.e. the settlement /compromise dated 16th April, 2001 is produced on the record. The deed of understanding i.e. settlement /compromise reads as under:

DEED OF UNDERSTANDING:

We, the undersigned, applicant Pritiben Navinchandra Bhavsar and Ashesh Amratlal Bhavsar respondent, hereinabove file this Deed of understanding with the under mentioned condition by way of full and final settlement to our matrimonial dispute permanently.

(1) The applicant original petitioner Pritiben agree and accept the decree of divorce passed by the City Civil Court, Ahmedabad on 31-7-97 in H.M.P. No.205/94 and so the said decree will be permanently binding to her.

(2) The applicant Pritiben also agree and accept the order of dismissal of first appeal No.3396 of 1997 passed by the Honourable High Court and so this restoration application will be treated as unconditionally withdrawn by this deed of understanding.

(3) The applicant has agreed to accept the amount of Rs.3,61,000/- (Rupees Three lacs, sixty one thousand only ) against the permanent future maintenance for herself and for her minor child, it is also agreed by the applicant Pritiben that the said amount is sufficient for future maintenance of herself and a minor child and so the amount will be divided between them as under:-

Rs.2,25,000/- (Rupees two lacs, twenty five

thousand) will be invested in 6 years long terms F.D. in the joint name of minor child and Pritiben N. Bhavsar the applicant, with the clear understanding that, the minor will get only the interest amount during the period which will be directly credited in his bank account on every month and the child will be entitled on encash the F.D. amount on the day of expiry (maturity) But the applicant Pritiben will have no right to disturb the said amount of principal amount in the permanent interest and welfare of the child. The said F.D. will be kept in the custody of applicant Pritiben. It is also agreed and accepted by the applicant Pritiben that the rest of the amount of Rs.1,36,000/(Rupees One lac, thirty six thousand only) will be given to her by the opponent Ashesh Bhavsar through draft by way of permanent maintenance which is sufficient for the future maintenance for applicant Pritiben and she accept and agree to the said amount and so she agrees to withdraw the application under section 125 No.186/91 from the Metropolitan Court No.9.

(4) The applicant also accept and agree the said amount as a sufficient amount for her future maintenance and so she also agrees to withdraw the litigation under section 25 of Hindu Marriage Act bearing No.402/2000 pending before the Family Court. She also agrees to withdraw all the claims and rights mentioned in Suit NO.1505/96 pending before the Court. She also accept and agrees to withdraw the Criminal Case No.874/96 pending before the Metropolitan Magistrate Court No.2, by the final settlement of this Deed of Settlement.

(5) The parties hereinabove will be at liberty to have an independent new matrimonial life with any other spouse of their own choice and none of the party will disturb, obstruct, the said new life by any means.

(6) The parties herein accept and agrees that no further litigation of civil and criminal nature will be instituted against each other with regards to any rights or claims arising out of the said matrimonial life which has been declare dissolved by the decree of divorce dated 31-7-97.

(7) This deed of understanding has been accepted and agreed by both the parties with a complete understanding and so the applicant will not have any further claim or right towards the opponent or his family members.

We agree and accept the above terms and conditions and in witness whereof we have set our hands to this writing on this 16th day of April, 2001.

#. The appellant has accepted the decree of dissolution of marriage of her with the respondent made by City Civil Judge at Ahmedabad. The respondent husband has agreed to give Rs.3,61,000/- towards permanent future alimony both for the appellant and the minor child. The cheques towards this amount have been submitted along with this deed of compromise/settlement but on the day on which the same were submitted, the appellant was not present and the Court has not considered it to be appropriate as well as in the interest of the lady and the child to hand over the cheques to the advocate and the same were ordered to be kept by the Registrar and the appellant was free to withdraw the same any time from the registry.

#. Between the parties, as per this deed of understanding, settlement/compromise, I find that following cases are pending in different Courts.

(i) Family Suit No.402/2000 (Old No.H.M.P. No.246/98) pending in the Family Court at Ahmedabad.

(ii) Family Suit No.130/2000 (Old No.H.M.P. No.148/96) pending in the Family Court at Ahmedabad.

(iii) Criminal Case No.874/96 pending in the Court of Metropolitan Magistrate, Ahmedabad.

(iv) Criminal Misc. Application No.186/91 pending in the Court of Metropolitan Magistrate Court No.9 at Ahmedabad.

#. In the deed of understanding, the wife-appellant has stated that she has agreed to withdraw the application under sec. 125 being Criminal Misc. Application No.186/91 and Family Suit No.402/2000 pending in the Family Court. She also agreed to withdraw the Criminal case No.874/96. She has also mentioned that she has

agreed to withdraw the Suit No.1505/96 pending before the Court. It is not stated before which Court this suit is pending. I called the files of all the matters pending in different Courts between the parties.

#. From the Family Suit No.130/2000 pending in the Family Court at Ahmedabad, I find that the same has already been dismissed by the Court on 29th February, 2000. In view of this fact, now nothing needs to be done in this matter.

#. Family Suit No.402/2000.:

This is an application filed by the appellant-wife for maintenance under sec. 125 of Hindu Marriage Act and as per the terms of compromise, this Family Suit No.402/2000 (Old H.M.P. No.246/98) is dismissed. The Family court at Ahmedabad is directed to draw a decree accordingly in the matter.

#. Criminal Misc. Application No.186/91:

This is an application filed by the appellant -wife under sec. 125 of Cr.P.C. for maintenance. From the paper of this case called from the Metropolitan Magistrate Court No.9 at Ahmedabad, I find that this matter was decided on 19th November, 1994. So far as the criminal revision application filed by husband against this order is concerned, the operative part of the judgment is not available on the record. In view of this fact, as this application has already been decided, no order needs to be passed. However, where this application is pending in the Sessions Court in revision or somewhere in the Magistrate's Court, it shall stand dismissed as per the agreement of the appellant-wife and revision filed by the husband, if is pending, shall also stand dismissed automatically.

#. So far as the criminal case No.874/96 is concerned it is for the offence under sec. 498-A etc. of IPC against the respondent and other family members. The appellant-wife agreed to withdraw the same. Though the offence under sec. 498-A IPC is not compoundable but ultimately this relates to the offence arising out of a matrimonial relation and when the matrimonial relation has come to an end, the husband has agreed to pay Rs.3,61,000/- towards permanent alimony to the wife and child, and wife has also agreed to withdraw this case, in case such a prayer is not granted then this provision of sec. 498-A of IPC will result in discontinuation of permanent settlement of a matrimonial dispute either of

reunion or separation and the matter has to be considered in the larger interest of the parties. It is an offence committed against the wife-respondent and in case in the facts of this case where she has agreed to withdraw the same, it is in the larger interest of the parties also to dismiss the same and discharge the accused. Accordingly, the matter i.e. the Criminal Case No.874/96 pending in the Metropolitan Magistrate Court No.9 at Ahmedabad is also dismissed and accused are discharged. Necessary order may be drawn by the court concerned in the file of the case.

##. In the result, this first appeal is dismissed in accordance with the terms of settlement.

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