



SA Pathan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13465 OF 2022

[REDACTED]

... Petitioner

V/s.

[REDACTED]

... Respondent

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by SHABNOOR
AYUB PATHAN
Date: 2023.09.12
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Mr. Amol B Jagtap, for the Petitioner.

Mr. Anshuman R Asare a/w Mr. Ankur Pahade a/w
Mr. Swapnil Phatangare, for the Respondent.

Mrs. [REDACTED] Sole Respondent-in-person.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 11, 2023

P.C.:

1. Challenge in this writ petition under Article 227 of the Constitution of India is to the order dated 17 August 2022 passed by the Trial Court rejecting application of petitioner seeking directions against the respondent to honor settlement pursis dated 30 September 2020. In the alternative, the petitioner prayed for return of all money and property which were given to the respondent in pursuance of joint settlement pursis dated 30 September 2020. The another order below Exhibit 69 for enforcement of joint pursis is also rejected on 17 August 2022.

2. The petitioner has filed a petition for divorce under Section 13(1) (i-a) of the Hindu Marriage Act, 1955. The proceedings were

referred for mediation before the mediator.

3. On 30 September 2020, the petitioner and respondent agreed to settle the matter amicably.

4. Accordingly, consent terms were filed by the application below Exhibit 58 which created obligations on both the parties.

5. According to the petitioner, he complied with the obligations cast on him under the consent terms. However, the respondent wife is refusing to comply with her part of the consent terms.

6. The petitioner, therefore, filed two applications before the Trial Court seeking directions against the respondent to comply with the consent terms which is rejected by the Trial Court holding that the petitioner has available the remedy as per law.

7. Learned Advocate for the petitioner submitted that the petitioner has complied with the obligations cast on him by clauses 3 and 4 of the consent terms namely by paying amount Rs.12,50,000/- towards one time maintenance to the respondent and also transferred the residential flat and has paid loan amount on the said flat. According to him, obligations cast on petitioner as per clauses 2, 6 & 7 of the consent terms have not been complied with by the respondent.

8. According to respondent, clause 4 to the extent of payment of the maintenance is not complied, clause 5 is for transfer of Public Provident Fund (PPF) account in the name of respondent is also not complied with.

9. According to respondent, once the decree for divorce is

passed, obligation under clause 1 will not be fulfilled and therefore, respondent is not complied with clauses 2, 6 and 7 of the consent terms.

10. With the assistance of learned Advocate for the parties, I have scrutinized the consent terms. Considering this consent terms, I am satisfied with all the terms are enforceable in law. The material on record indicates that the petitioner has complied with payment of Rs.12,50,000/- towards one time settlement by way of maintenance to respondent. The condition under clause 4 is complied with by transferring the residential flat to respondent.

11. In so far as, non-compliance under clause 5 by the petitioner, on perusal of the said condition, it is clear that the said PPF account needs to be transferred after passing of decree of divorce between the petitioner and respondent.

12. The apprehension of non-compliance in future about sharing respondents of higher education is misconceived as it is always open for respondent to enforce clause 1 of the consent terms as and when occasion arises.

13. It appears that the petitioner has paid maintenance amount of the flat.

14. It is, therefore, necessary that the respondent to comply with clauses 2, 6 & 7 of the terms and conditions.

15. It needs to be noted that the consent terms create mutual obligation on the parties. The petitioner has performed his part of the consent terms by paying amount or Rs.12,50,000/- and

transferred the residential flat. The respondent had accepted the benefit arising out of consent terms. It is, therefore, not permissible for respondent to wriggle out of consent terms of accepting benefits of it. Therefore, it is necessary that the respondent shall perform her part of obligations created under clauses 2, 6 & 7 of the consent terms. Hence, pass following order:

- a) The respondent shall perform her part under clauses 2, 6 & 7 of the consent terms within the period of two months from today.
- b) If the respondent fails to perform her part of the consent terms within stipulated time above, the application below Exhibit 63 filed before the Trial Court dated 7 September 2021 shall stand allowed in terms of prayer clause (b).

16. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)