

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.11172 OF 2019 (GM - FC)

BETWEEN:

SMT. LATHA CHOODIAH

... PETITIONER

(BY SRI RAVI R., ADVOCATE)

AND:

SRI SREE BALAJI H.,

... RESPONDENT

(BY SRI SUYOG HERELE E., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE ENTIRE RECORDS IN M.C.NO.2484/2013 THAT WAS BEFORE THE VI ADDL. PRINCIPAL JUDGE, FAMILY COURT BANGALORE; SET ASIDE THE MEMORANDUM OF SETTLEMENT UNDER SECTION 89 OF CPC R/W RULES 24 AND 25 OF KARNATAKA CIVIL PROCEDURE [MEDIATION] RULES, 2005, ENTERED ON DTD:7.8.2015 BETWEEN THE RESPONDENT AND PETITIONER AND DECREE DTD:11.8.2015 i.e. ANNEXURE-B AND A PASSED BY VI ADDITIONAL FAMILY COURT JUDGE, BANGALORE IN M.C.NO.2484/2013.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 11.10.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking to set aside the memorandum of settlement arrived at under Section 89 of the Civil Procedure Code read with Rules 24 and 25 of the Karnataka Civil Procedure (Mediation) Rules, 2005 – settlement entered into on 07-08-2015 between the petitioner and the respondent and consequent quashment of the decree dated 11-08-2015 passed in M.C.No.2484 of 2013.

2. Heard Sri R.Ravi, learned counsel appearing for the petitioner and Sri E.Suyog Herele, learned counsel appearing for the respondent.

3. Brief facts that lead the petitioner to this court in the subject petition, as borne out from the pleadings, are as follows:-

The petitioner was once the wife of the respondent. Both the petitioner and the respondent got married on 13-08-2006. It is the claim of the petitioner in the petition that she belongs to Adi Dravida caste and the respondent belongs to other backward class and, therefore, their marriage was not accepted by the parents of the respondent. Several instances of torture meted out by the respondent and others are narrated in the petition. Those are not the issues that are necessary for consideration in this petition.

4. The respondent institutes proceedings for annulment of marriage in M.C.No.2484 of 2013 under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. When the proceedings were on, at the stage of filing of written statement, the trial Court refers the matter to mediation on the request made by the parties on 06-07-2015.

The parties appeared before the mediation and arrived at a memorandum of settlement on 07-08-2015. In terms of the memorandum of settlement, the annulment of marriage or separation was agreed to between the parties and a sum of Rs. 30,00,000/- (Rupees Thirty Lakhs only) was to be paid by the respondent as permanent alimony in full and final settlement for such annulment. Based upon the said settlement arrived at in terms of Section 89 of the CPC read with Sections 24 and 25 of the Karnataka Civil Procedure (Mediation) Rules, 2005 the Court before whom M.C.No.2484 of 2013 was pending draws up a decree in terms of the said memorandum of settlement and annulment of marriage happens thereafter. While doing so, the Court permitted amendment to be carried in the plaint.

5. The respondent had alleged in the plaint that the petitioner was suffering from certain mental disorder and it was not possible for the respondent to lead a normal peaceful life. Since the settlement had been arrived at by then, the Court permitted amendment to be carried out and the portions which alleged certain acts of the petitioner got deleted. It is not in dispute that the

petitioner receives the amount of Rs.30,00,000/- as permanent alimony in terms of the settlement and then consents for closure of proceedings.

6. After the annulment of marriage happens and the decree was drawn up, since the respondent had become free, he marries another lady and starts to live with the second wife. It is then, the petitioner who was the former wife, began to create problems to the respondent by registering a complaint before the jurisdictional police and also threatening the respondent with dire consequences. On such instances, the respondent approaches the civil Court in O.S.No.5350 of 2017 seeking permanent restraint upon the petitioner from trespassing into the residence of the respondent. The permanent injunction was granted by the civil Court.

7. At the same time the petitioner institutes proceedings before the Karnataka State Scheduled Castes/Scheduled Tribes Commission, Bangalore making certain allegations. The respondent challenges the said action in Writ Petition Nos.43022-43026 of 2017. This Court on 21-09-2017 grants stay of the proceedings

impugned therein. Immediately thereafter, a complaint comes to be registered by the petitioner against the respondent for several offences under the IPC. After all these proceedings having failed to secure any order in her favour, the petitioner files the subject writ petition calling in question the memorandum of settlement and the decree that was drawn up.

8. The learned counsel appearing for the petitioner would seek to contend that she was mentally unstable when the settlement was signed and did not know the consequences of settlement and, therefore, the settlement is void as it is entered into with a party who was of unsound mind. The learned counsel would further contend that the amendment carried out in terms of the order of the Court dated 11-08-2015 was without even notice to the petitioner. The fact with regard to mental instability that was alleged by the respondent was deleted without the knowledge of the petitioner from the plaint. He, therefore, contends that the entire settlement is *void ab initio* and would seek the settlement to be set aside and all consequential actions to be annulled. The learned counsel, however, admits that permanent alimony of

Rs.30,00,000/- in terms of the settlement was received by the petitioner.

9. On the other hand, the learned counsel appearing for the respondent would refute the submissions to contend that it was a settlement arrived at between the respondent and the petitioner before the mediation. The petitioner with eyes wide open accepted the settlement, took Rs.30,00,000/- as permanent alimony and was quiet for two years. It is only after the respondent got re-married every action is sought to be taken by the petitioner; not one but plethora of cases are filed against the respondent and his family members. When nothing materialized in her favour, the present petition is preferred seeking to set aside the settlement itself. The learned counsel would submit that the respondent has moved on and has a family of his own now, and putting the clock back would lead to devastating effect on the present family of the respondent.

10. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

11. The factum of marriage between the petitioner and the respondent on 13-08-2006 is not in dispute. On 27-05-2011 the respondent who preferred a matrimonial case in M.C.No.1687 of 2011 had withdrawn the same on the persistence and promise of good conduct and behavior of the petitioner. Again on an allegation that the respondent was unable to bear the torture of the petitioner instituted M.C.No.2484 of 2013 seeking dissolution of marriage. All these are a matter of record. The second case i.e., M.C.No.2484 of 2013 was instituted on 18-06-2013. When the proceedings were on, the learned trial Judge refers the matter to be mediated between the parties and the parties – petitioner and the respondent appeared before the mediation and arrived at a memorandum of settlement in terms of the statute afore-quoted. The memorandum of settlement so arrived at reads as follows:

"MEMORANDUM OF SETTLEMENT UNDER SECTION 89 OF CPC READ WITH RULES 24 AND 25 OF THE KARNATAKA CIVIL PROCEDURE (MEDIATION) RULES, 2005.

The parties above named submit as follows:

I. The aforesaid petition was referred to mediation for resolving the dispute between the parties. During the course of mediation, they have resolved their dispute and have agreed to the following terms and conditions.

1. *Both the petitioner and the respondent admit their relationship as husband and wife. Their marriage solemnized on 13-08-2006 at Mysore, as per Hindu rites and customs.*
2. *Both the parties state that they have no issues born to them out of their wedlock.*
3. ***Due to irreconcilable differences, misunderstanding and severe incompatibility between them, both the parties could not get along with each other and as such, they started living separately since 27.04.2011. There is no chance of both the parties rejoining and leading a happy married life. Both the parties have decided to put an end to their marital bond as their marriage is irretrievably broken down. They have stuck to their decision in getting their marriage dissolved by a decree of divorce. The efforts made by their elders, well-wishers and relatives to unite them and to bring them under one roof as husband and wife did not yield any fruitful result. Even during the course of mediation, despite best efforts, both the parties have not been able to eschew their differences and reconcile. Both the parties agreed for the divorce on the following conditions.***
4. ***The petitioner has agreed to pay a sum of Rs.30,00,000/- (Rupees thirty lakh only) to the respondent towards her permanent alimony/ maintenance in full and final settlement by way of demand draft bearing No.971907 drawn on Citi Bank, M.G.Road, Bangalore dated 06-08-2015 before the Hon'ble Court at the time of reporting the settlement. The respondent has agreed for the same.***
5. *Apart from the above, both the parties state that they have no other claims over the movables or immovable properties belonging to each other, existing at present or to be acquired at a future stage.*

6. *Both the parties have already exchanged their respective gold and silver articles.*
7. ***Both the parties hereby declare that they shall not have claim of any nature against each other either present, past or future.***
8. ***Both the petitioner and the respondent hereby voluntarily and out of their free will and volition and without any coercion, threat or undue influence, agree and consent with each other for the dissolution of their marriage, by a decree of divorce.***
9. *Both the parties undertake that they will also not interfere with the lives of each other in future.*

II. In view of the aforesaid agreement entered into between the parties, the parties pray that this Court be pleased to pass a decree of divorce, between the parties with regard to the marriage solemnized on 13-08-2006 at Mysore, in terms of the aforesaid settlement/agreement.

III. Parties will appear on 11-08-2015 before the Court for passing orders in terms of the agreement."

(Emphasis added)

Clause 4 of the settlement reads about the agreement between the parties for permanent alimony to be given to the wife at Rs.30,00,000/- and a demand draft was to be handed over to the petitioner. It was also undertaken that the parties would not interfere with the lives of each other in future. Based upon the said settlement, when the matter appeared before the Court on

11-08-2015 the Court draws up a decree on the basis of the settlement and the decree of the Court dated 11-08-2015 reads as follows:

"CLAIM

The petitioner has filed this petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 against the respondent praying for dissolution of his marriage solemnized on 13-08-2006 by granting a decree of divorce.

This petition coming on for final disposal before Smt. B.S. Bharathi, B.Sc., LL.B., VI Additional Principal Judge, Family Court, Bangalore and in the presence of Ruia & Associates, Advocate for the petitioner and Sharath & Associates, Advocate for the respondent.

It is ordered and decreed that –

Petition is allowed in terms of the settlement entered between the parties before mediation center, Bangalore.

Wedding between the parties dated 13-08-2006 at Mysore is hereby dissolved by granting decree of divorce.

It is further ordered that the MEMORANDUM OF SETTLEMENT shall form part of the decree.

It is further ordered and decreed that there shall be no order as to cost.

Given under my hand and seal of this court on this the 11th day of August, 2015."

(Emphasis added)

This ended the marriage between the respondent and the petitioner. On 11-08-2015 the respondent also files an application seeking to delete those portions which had described the character of the petitioner in dangerous and in poor light. This application was allowed and the amendment was carried out before the Court in terms of the order passed by the Court. Those portions were concerning mental disorder of the petitioner. It was only an allegation. Evidence on the said mental disorder was yet to come about and the matter was settled even before that. In the light of settlement, the respondent files the application seeking amendment to the plaint and removal of objectionable portions on the petitioner. Nothing happens for a period of two years.

12. The respondent gets married again on 06-02-2017. The petitioner who was once the wife of the respondent springs into action and files Miscellaneous First Appeal in M.F.A.No.9162 of 2017 before this Court seeking to set aside the decree dated 11-08-2015 passed by the trial Court on the basis of a settlement arrived at on 07-08-2015. The Division Bench closes the proceedings on 18-01-2019 by the following order:

"Learned counsel for the respondent submits that the appeal filed under Section 19(2) of the Family Courts Act, 1984 is not maintainable as the decree for divorce has been granted on the basis of a settlement arrived at before the Bengaluru Mediation Centre.

2. Learned counsel for the appellant submits that permission may be granted to withdraw this appeal reserving liberty to the appellant to assail the settlement arrived at before the Bengaluru Mediation Centre, as well as the Decree of divorce, in accordance with law.

3. Recording the submission of the learned counsel for the parties, the appeal is disposed of with liberty to the appellant to either seek recalling of the said settlement arrived at before the Bengaluru Mediation Centre or avail any other remedy available, in accordance with law."

Liberty was reserved to the petitioner/appellant therein to seek recalling of the said settlement arrived at before the Bangalore Mediation Centre or avail any other remedy available in law. Contending that the only remedy available in law is to approach this Court under Article 226 of the Constitution, the subject writ petition is filed on 8-03-2019. The submissions made by the learned counsel for the petitioner have all been noted hereinabove. Various proceedings instituted by the petitioner against the respondent after annulment of marriage are also a matter of record as the respondent has appended the same to the statement of objections.

13. The contention of the petitioner is that the settlement was arrived at by misleading or by force. The same is belied on perusal of the order sheet. On 11-08-2015 prior to drawing up of the decree, the order passed by the Family Court reads as follows:

"Both parties and counsel are present before the Court and Mediation report is placed before the Court. On enquiry both the parties stated that terms of Mediation report are known to them. Both parties stated that court may record the same and proceed further. Rs.30,00,000/- DD bearing No.971907 of Citi Bank given by the petitioner to respondent as per mediation settlement. Hence, the following order is passed:

ORDER

Pursuant to Mediation Report wedding between the parties dated 13-08-2006 at Mysore is hereby dissolved by granting decree of divorce as per Mediation Report.

Draw decree accordingly."

Both parties and their counsel were present before the Court and mediation report was placed. On enquiry by the Court both parties stated that mediation report is known to them and agreed that the Court may record the same and proceed further. Rs.30,00,000/- DD was also acknowledged by the petitioner before the Court. It is then the Court draws up the decree. Several proceedings instituted against the respondent by the petitioner need not bear any consideration in the case at hand. The only issue is, whether the

petitioner can now challenge those proceedings in the teeth of aforesaid admitted facts.

14. It is germane to notice several proceedings which the petitioner sought to initiate against the respondent. The first attempt that was made was by filing a Miscellaneous First Appeal seeking to set aside the settlement arrived at and the decree drawn up thereto. The M.F.A. No.9162 of 2017 was filed and kept pending at the stage of office objections. Simultaneously proceedings were instituted before the Karnataka State Scheduled Castes/Scheduled Tribes Commission alleging offences punishable under Section 3(1)(8)(9)(10)(11)(12)(15) read with 3(2)(5) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The prayer made before the Commission is necessary to be noticed and it reads as follows:

"...."

ಈ ಮೇಲ್ಕಂಡ ಕೃತ್ಯಗಳನ್ನು ಎಸಗಿ ಶ್ರೀ ಬಾಲಾಜಿ, ಬಾಲಾಜಿಯ ತಂದೆ ಹನುಮಂತಪ್ಪ, ತಾಯಿ ಅಲಮೇಲು, ಪ್ರಿಯಾಂಕ ಭಗತ್, ಹರ್ಷವರ್ಧನ ಭಗತ್ (ಪ್ರಿಯಾಂಕಳ ಸಹೋದರ), ಬಿಜಾಯ್ ಕುಮಾರ್ ಭಗತ್, ಸುಲೇಖಾ ಭಗತ್, ಮತ್ತು ಸೆಕ್ಯೂರಿಟಿ ಗಾರ್ಡ್ (ಹೆಸರು ಗೊತ್ತಿರುವುದಿಲ್ಲ, ನೋಡಿದರೆ ಗುರುತಿಸಿತ್ತೇನೆ) ಮುಂತಾದವರು ಪರಿಶಿಷ್ಟ ಜಾತಿ, ಪರಿಶಿಷ್ಟ ಪಂಗಡ (ಪ್ರಿವಿಲೆಜ್ಡ್ ಆಫ್ ಅಟ್ರಾಸಿಟಿಸ್) ಕಾಯಿದೆ, 1989, ಕಲಂ 3(1) (8) (9) (10) (11) (12) (15) ಹಾಗೂ ಕಲಂ 3(2) (5) ರನ್ವಯ ಅಪರಾಧವೆಸಗಿರುತ್ತಾರೆ. ಆದುದರಿಂದ ಇವರುಗಳೆಲ್ಲರ ಮೇಲೆ ಸೂಕ್ತ ಕ್ರಮ ತೆಗೆದುಕೊಂಡು ನನಗೆ ನ್ಯಾಯ ಒದಗಿಸಬೇಕೆಂದು ತಮ್ಮಲ್ಲಿ ಕೇಳಿ ಕೊಳ್ಳುತ್ತೇನೆ."

This is challenged by the respondent before this Court in W.P.No.43022-43026 of 2017 in which an interim order as prayed for was granted. Therefore, those proceedings at the stage of notice itself were stayed by this Court. This is the second proceeding that the petitioner sought to initiate against the respondent. After grant of interim order by this Court a private complaint comes to be registered by the petitioner against the respondent. The matter was referred to investigation by the concerned Court. The allegation *inter alia* in the complaint was as follows:

"61. By committing aforementioned offences the accused No.1 to 8 have committed offences under Sections 34, 35, 120A 295A, 298, 321, 322, 349, 350, 351, 354, 355, 376A, 415, 416 and 497 of the CPC and the said offences are cognizable/non-cognizable, bailable/non-bailable and this Hon'ble Court has jurisdiction to try the same.

WHEREFORE, the complainant must humbly prays that this Hon'ble Court be pleased to take cognizance of the offences committed by the accused persons and to refer the case u/s 156(3) to jurisdictional Assistant Commissioner of Police to investigate the case and the Hon'ble Court may be pleased to punish the accused in accordance with law for the other offence committed by the accused under the provisions of Indian Penal Code in the interest of justice."

This is immediately called in question by the respondent in Criminal Petition No.5201 of 2018. This Court by its order dated 20-09-2018

admitted the petition and granted an interim order of stay of all further proceedings. This is the third proceeding that the petitioner sought to initiate against the respondent. All these ended in failure *albeit, prima facie*.

15. It is then when M.F.A.No.9162 of 2017 came up for consideration liberty was sought to withdraw and avail of any other remedy. The consequence of the liberty forms the present petition. Therefore, it is the 4th in number. It is here the petitioner seeks to set aside the entire proceedings that have happened. If the petitioner and the respondent have sought to end their marital life by way of settlement and the petitioner has received permanent alimony, as full and final term of settlement, the reason for initiating so many proceedings is clearly narrated at paragraph 26 of the writ petition. It is when the respondent shifted the house in the month of May 2017 the petitioner learns about re-marriage of the respondent and, therefore, all the proceedings are initiated. The allegations between the wife and the husband may be manifold. Once the issue is settled before the Court and after the Court recording settlement of parties, merely because the

respondent re-marries, the petitioner cannot be seen to call in question the settlement itself on whatsoever ground except, it being a fraud. I do not see any demonstration of fraud in the entire petition.

16. What has triggered the petition is narrated hereinabove. The petitioner appears to have abused every jurisdiction in law against the respondent, all of which, are a matter of record. The allegation that the respondent had amended the plaint without her knowledge is also contrary to record as when the plaint was amended in the open Court on 11-08-2015, both the petitioner and the respondent were present, and in their presence the amendment was carried out. After being present and knowing fully well as to what has transpired, the petitioner seeks to initiate so many proceedings against the respondent. Therefore, this becomes a case where the petition will have to be dismissed with exemplary costs. But, this Court is holding its hands in the peculiar facts of this case, as the petitioner was a wife whose marriage has been annulled *albeit* on a consent and imposition of costs would add to

the agony. Therefore, the petitioner is only admonished for abusing every jurisdiction as noted hereinabove.

17. For the aforesaid reasons, the petition lacking in merit, stands dismissed.

**Sd/-
JUDGE**

bkp
CT:MJ