

MANJULA
v.
K.R. MAHESH

JULY 11, 2006

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Matrimonial Law—Marital discord—Petition for divorce by husband in Family Court—Petition by wife in Supreme Court for transfer of the divorce petition—Held, in view of the fact that marriage has irretrievably broken down, the petition for divorce treated as joint petition for divorce on mutual consent—Direction to husband to deposit certain amount in particular manner for the welfare of the child of the parties—Code of Civil Procedure, 1908—Section 25.

Respondent-husband had filed a petition for divorce on various grounds in Family Court, Chennai. Petitioner-wife filed transfer petition in this Court for transfer of the case to the Court in Mumbai. During hearing of the petition, a suggestion was given by the Counsel for the parties that the marriage had irretrievably broken down and hence keeping in view the welfare of their daughter, the petition for divorce should be allowed after making sufficient arrangement for the welfare of the daughter.

Disposing of the transfer petition, the Court

HELD: 1.The marriage has irretrievably broken down and there would be no point in making an effort to bring about conciliation between the parties. However, the welfare of the daughter is of paramount importance and the parties appear to have re-conciled to this position.

[408-A]

2. A sum of rupees five lakhs shall be kept in fixed deposit in nationalized bank initially for a period of 5 years with monthly interest withdrawal to meet the educational expenses of the child. A sum of Rs.3,60,000/- will be deposited in the name of the child in a bank account in a Unit Linked Policy of AVIVA for a period of 12 years. [408-B-C]

A 3. On the deposit being made in the indicated manner the suit for divorce filed by the respondent in the Family Court shall be treated to be a joint petition for divorce, on the basis of mutual consent and appropriate decree shall be passed. The allegations made in the petition for divorce shall be treated to be inconsequential in view of the fact that divorce shall be granted on mutual consent. [408-E-F]

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CIVIL ORIGINAL JURISDICTION : Transfer Petition (C) No. 947 of 2005.

C Petition under Section 25 of the Code of Civil Procedure, 1908 for transfer of the O.P. No. 1857 of 2005 titled *K.R. Mahesh v. Manjula* pending in the Family Court, Chennai (Tamil Nadu) to the Family Court at Mumbai (Maharashtra)

Gaurav Agrawal and Akila Agarawal for the Petitioner.

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P.N. Puri for the Respondent

The Judgment of the Court was delivered by

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ARIJIT PASAYAT, J. Marriages are made in heaven, is an adage. A bride leaves the parental home for the matrimonial home, leaving behind sweet memories there with a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She expects not only to be a daughter-in-law, but a daughter in fact. But the large number of cases flooding the courts with allegations of torture, harassment for dowry, saddens one's heart. Where lies the fault? Is it lack of communication or adjustment? Or, is it the victory

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of greed and materialistic needs over love, affection and human values? The answer is difficult to find. There is another angle involved. The evil design to harass the in-laws over petty things by making accusations of dowry demand and torture. In such cases, the vital question again is whether laws which are really dynamic instruments fashioned by society for the purpose of

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achieving human relations by elimination of social tensions and conflicts have achieved the intended objectives or are being used as weapons of an assassin to harass and humiliate others instead of being used as a shield against injustice.

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There is another social angle involved. When the parents fight out their marital disputes, sometimes acrimoniously, the child who have nothing to do

with the fight and is the ultimate victim watches helplessly. The fight goes on unmindful of the fact that in future the child carries the tag of being one of a broken family. It is more stigmatic for a girl child. The stigma becomes more visible when her marriage is thought of in later years. This reality of life is, in most cases, lost sight of. But sometimes the parties take note of this reality and for the sake of the child iron out their differences.

During the hearing of the transfer petition a suggestion was given by learned counsel for the parties that the marriage has become irretrievably broken and keeping in view the welfare of their daughter it would be better if the petition for divorce filed by the respondent is allowed, after making sufficient arrangement for the welfare of the daughter.

The petitioner and the respondent entered into wedlock on 28.11.1994 and the daughter was born on 30.12.1995. Thereafter it appears that cracks started appearing in the marital relations and a series of litigation has resulted. In fact, on the basis of a prayer for maintenance, the Family Court at Mumbai has granted maintenance at the rate of Rs.1500/- per month. The respondent has filed a petition for divorce on various grounds. Attempts have been made by learned counsel for the parties to see whether the differences can be ironed out. But the result appears to have been negative. Thereafter the suggestion as noted above has been given. The respondent has stated that he is willing to pay a sum of rupees seven lakhs so that by part of it the education of the daughter who is presently staying with the petitioner can be taken care of and balance money can be spent to meet the marriage expenses when she reaches the marriageable age. On the contrary the petitioner has stated that the amount offered by the respondent is low. It has been stated that the respondent may deposit Rs.8.5 lakhs in the name of the daughter which can be invested in the Kisan Vikas Patras to ensure that after 12 years the said amount becomes roughly about rupees 20 lakhs. In addition, the respondent should pay such amount which by investment can fetch interest of about Rs.3,500/- per month for the daughter's education presently, and Rs.6,000/- per month for higher education. It is submitted Kisan Vikas Patras carries interest @ 8.4% while the bank fixed deposit rate is around 6.5%.

Respondent pointed out that investment in M/s Aviva Insurance Company by paying annual premium of Rs.30,000/- for a period of 12 years will fetch assured sum on maturity Rs.8,70,000/- with a three years lock in period. It is submitted on deposit of Rs.3.60 lakhs in bank account of ABN Amro Bank in a unit linked policy of AVIVA called "Save Guard Policy"

A shall bring in Rs.5,08,182/- for a deposit of 10 years.

We find that acceptedly the marriage has irretrievably broken down and there would be no point in making an effort to bring about a conciliation between the parties. However, the welfare of the daughter is of paramount importance and the parties appear to have re-conciled to this position.

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We have considered the suggestion given by the parties. We direct as follows:-

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1. A sum of rupees five lakhs shall be kept in fixed deposit in a nationalized bank initially for a period of 5 years with monthly interest withdrawal to meet the educational expenses of the child.

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2. A sum of Rs.3,60,000/- will be deposited in the name of the child Anugraha Mahesh represented by the mother guardian Manjula, the petitioner, in a bank account with ABN Amro Bank in a Unit Linked Policy of AVIVA for a period of 12 years. As noted above, it has been indicated in the documents filed by the respondent that after a period of 12 years the assured sum upon maturity would be Rs.8,70,000/- with a three year lock in period.

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The respondent shall file an undertaking before the concerned Trial Court that in case there is a shortfall in the assured sum, the respondent shall pay the balance amount to the petitioner. The deposit shall be made within a period of six months. On the deposit being made in the indicated manner the suit for divorce filed by the respondent in the Family Court, Chennai (OP No. 1857 of 2005) shall be treated to be a joint petition for divorce, on the basis of mutual consent and appropriate decree shall be passed. The allegations made in the petition for divorce shall be treated to be inconsequential in view

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of the fact that divorce shall be granted on mutual consent.

The transfer petition is accordingly disposed of.

K.K.T.

Transfer Petition disposed of.