
(2014) 05 AHC CK 0128

Allahabad High Court (Lucknow Bench)

Case No: Special Appeal No. 141 of 2014

Akshata

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 29, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 2A
- Hindu Marriage Act, 1955 - Section 13B, 13-B

Citation: (2014) 5 ADJ 753

Hon'ble Judges: Rakesh Srivastava, J; Rajesh Kumar Agrawal, J

Bench: Division Bench

Advocate: Ram Raj and Pramod Kumar Punhani, Advocate for the Appellant; Subhash Chandra Dhashana, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

1. Sri Subhash Chandra Dhashana, Advocate, has filed his Vakalantnama on behalf of respondent is taken on record. Heard Dr. E. Ravishankar and Smt. Veena Ravishankar, who appeared in person, alongwith their counsel Sri Ram Raj, Sri Pramod Kumar Punhani and Sri Subhash Chandra Dhashana.

2. This appeal arises from the order of the learned Single Judge dated 25.2.2014 in Habeas Corpus No. 25 of 2014.

3. The brief facts of the case are that Dr. E. Ravishankar married with Smt. Veena Ravishankar in the year 2002 and out of their wedlock, two children, namely, Km. Akshata and Km. Tejasvi born. At present, Km. Akshata is eleven years old and Km. Tejasvi is eight years old.

4. It appears that relation between the two became strained and both are living separately. Both, minor children are in custody of Smt. Veena Ravishankar. Dr. E. Ravishankar filed Petition No. D-46 of 2011 in Family Court, Mumbai wherein the

following order has been passed:

"4. After going through the contents of the application, it appears that the petitioner and respondent, both are residing together alongwith their daughters. The petitioner has also paid admission fees of the school of daughters. The copy of the ration card is also placed on record which shows that the petitioner and the respondent are residing together.

5. It is alleged that the respondent is having unnatural relations with one Mahalakshmi and she used to spend most of the time with the said lady. The said Mahalakshmi follows the respondent wherever she gets transfer. It is alleged that recently when the petitioner secured job at Mumbai with Ultratech Cement. The respondent was not happy and she informed the petitioner the same. She was transferred to Lucknow.

6. It is submitted that the daughters are adversely affecting due to her unnatural relations and as both of them are admitted in the school, it is necessary to restrain the respondent from removing the daughters from the petitioner's lawful custody. Petitioner has also secured a flat on lease in the same locality opposite to his earlier flat.

7. I have gone through the documents and contents of the application. I am prima facie satisfied that ad-interim ex parte injunction is require to be issued restraining the respondent from removing the daughters from the lawful custody of the petitioner.

ORDER

1. Issue notice to the respondent r/o 14th June, 2011.

2. Meanwhile, the respondent is hereby restrained from removing the daughters - Akshata and Tejaswi from the lawful custody of the petitioner."

5. The said petition has been transferred to Lucknow by the order of the Apex Court and is pending before the Family Court, Lucknow.

6. Raising the claim that despite the order passed by the Family Court, Mumbai, referred hereinabove, Smt. Veena Ravishankar has taken over the custody of two minors, the Habeas Corpus has been filed, seeking the mandamus commanding the respondent No. 2 to Smt. Veena Ravishankar to produce the minors and set them at liberty forthwith to enable their father, who is legal and natural guardian to take their care and custody and further restraining the opposite party No. 2 not to create hindrance or obstacle in the petition and custody of their father.

7. It is the case of the opposite party No. 2 that Family Court, Bombay has passed an ex parte order without hearing her. In fact, two minors are in her custody and it is wrong to say that she has taken over the custody of two minors from Dr. E. Ravishankar.

8. It appears that for violation of the order of the Family Court, Dr. E. Ravishankar filed an application under Order 39 Rule 2A C.P.C., which is pending. "The habeas corpus petition, without going into the claim and counter-claim raised by the parties, has been disposed of with the direction to the Family Court to dispose of the application under Order 39 Rule 2A C.P.C. within a period of two months.

9. Being aggrieved, the present special appeal has been filed. The matter came up for consideration before us on 26.5.2014. Both the parties appeared in person. The matter has been heard at length. Both the parties shown their willingness to settle down their disputes amicably once for all. The matter was directed to be placed on 27.5.2014.

10. Both, Dr. E. Ravishankar and Smt. Veena Ravishankar appeared in person alongwith their counsels. After hearing the matter, the Court directed Smt. Veena Ravishankar to produce the minors in the Court on 28.5.2014.

11. On 28.5.2014, Dr. E. Ravishankar and Smt. Veena Ravishankar appeared in person alongwith their counsel and also produced two minors. Before the Court, they have stated that it is not possible for them to live together as husband and wife and are willing to get the decree of divorce. So far as the custody of two minors is concerned, both agreed that custody shall remain with Smt. Veena Ravishankar, the mother of two children, till they attain the age of majority. They submitted that they have settled their disputes and arrived to a compromise.

12. On this, the Court asked them to file a joint affidavit and directed the matter to be put up on 29.5.2014.

13. Today, both, Dr. E. Ravishankar and Smt. Veena Ravi Shankar, appeared in person alongwith their counsel and a joint affidavit has been filed before us. In the affidavit, they have stated that they have settled their disputes amicably, on the terms and conditions, mentioned therein. The contents of the affidavits are reproduced as follows:

""That the deponent, namely Dr. E. Ravishankar is the father of the appellants and the other deponent, Smt, Veena Ravishankar/the respondent No. 2 in the aforesaid Special Appeal is the mother of the appellants and as such both are well conversant with the facts of the case. That by means of the aforesaid Special Appeal the appellants have assailed the impugned judgment and order dated 25.2.2014, passed by the Hon"ble Single Judge in Writ Petition No. 25(H/C) of 2014: Km Akshata and another Versus State of U.P. and another, contained in Annexure 1 to this memo of Special Appeal.

That since it is not possible for both the deponents to live together, therefore, they have decided to get mutually divorced by mutual consent.

That both the deponents have agreed to resolve the dispute amicably on the following terms and conditions:

(I) Both the deponent namely Dr. E. Ravishankar and Smt. Veena Ravishankar/the respondent No. 2 have agreed to mutually divorce one another. In this regard both the deponents shall file a petition for seeking divorce through mutual consent u/s 13-B of the Hindu Marriage Act, 1955, before the Learned Principle Judge, Family Court, Lucknow, before summer vacation. The terms and conditions contained in this affidavit/compromise shall become a part of the Divorce Petition.

(II) The deponent No. 1 namely, Dr. E. Ravishankar shall deposit a sum of Rs. 20 lacs in the name of the Appellant No. 1 and Rs. 20 lacs in the name of the Appellant No. 2, Km. Akshata and Km. Tejasvi respectively, both the daughters of the deponents. This amount shall be deposited for a long term fixed deposit, before the Principal Judge, Family Court, Lucknow by the deponent No. 1 by way of draft in the name of the Principal Judge, Family Court, Lucknow who shall deliver the same to the deponent No. 2 by way of Fixed Deposits on the passing of the decree of divorce through mutual consent, and the said deposits shall be fixed in a Nationalized Bank in the name of the appellants Km. Akshata and Km. Tejasvi for Rs. 20 lacs each and the same shall be fixed for a period of five years which shall be renewed thereafter till their age of 25 years or at the time of their marriages, whichever is earlier. The interest that shall accrue thereon the said amount of Rs. 40 lacs shall be utilized for the education of both the appellants only and shall be drawn by the deponent No. 2 namely, Mrs. Veena Ravishankar. For the aforesaid purposes, the deponent No. 2 shall open a Bank Account in a Nationalized Bank in her name Mrs. Veena Gangadharan Ayyar. All transactions arising out of this compromise shall be directed into the new Bank Account as mentioned above.

(III) The amount so deposited that is Rs. 20 lacs each in the name of the appellants shall be withdrawn by the appellants after they attain the age of 25 years or at the time of their marriage, whichever is earlier. Both the parties, namely, deponent Nos. 1 and 2 shall not raise any claim in any manner on the movable and immovable property of each other after the decree of divorce being passed. Km. Akshata and Km. Tejasvi shall have no right over the property of their father, Dr. E. Ravishankar in future after the deposit of Rs. 20 lacs each in the aforesaid manner before the Principal Judge, Family Court, Lucknow.

(IV) That the custody of both the appellants shall be with the deponent No. 2 only as long as they are minors and thereafter as per the wish of the appellants.

(V) The deponent No. 1, Mrs. Veena Ravishankar shall allow the deponent No. 1/Dr. E. Ravishankar access to the appellants. The deponent No. 1/Dr. E. Ravishankar shall be free to meet the appellants atleast once a month on prior notice. The deponent No. 1/Dr. E. Ravishankar shall visit the house of the deponent No. 2/Mrs. Veena Ravishankar for the purposes of meeting the appellants. In case the appellants wish to accompany the deponent No. 1/their father, he shall be free to take them out of the house for the sightseeing, recreational activities, food, shopping and the like.

(VI) In case the appellants wish to accompany the deponent No. 1, then he shall be free to take them out of the house for the sightseeing, recreational activities, food, shopping and the like.

(VII) The deponent No. 1 shall be free to talk to the appellants at reasonable time. The calls shall include Voice and Video Calls through popular video conferencing services and the like.

(VIII) It has also been agreed that as per convenience of both the deponents and the appellants, they shall go on leisure trips within or outside India. Further during the examination period, the deponent No. 1 shall not insist to go on to a tour.

(IX) Both the parties shall withdraw all the cases filed before the Court of Law and shall not press the same from today and all the Police Complaints or cross complaints, filed against each other by both the deponents, shall be withdrawn by them at their own costs. If any of the deponents continue to press any pending case or any complaint, the same shall be dismissed in terms of this compromise.

(X) That the terms and conditions of this compromise shall be final and binding upon the parties. If any party violates any term/condition of this compromise, then the same shall be defended by the other at the cost, consequences and risk of the party violating the conditions and terms of this compromise.

(XI) That both the parties have signed on this compromise in their full consciousness, freewill and without duress, threat or undue influence.

14. In view of the above settlement and the terms and conditions set out in the joint affidavit, we direct the parties to file a divorce petition u/s 13B of the Hindu Marriage Act before the Family Court, Lucknow within a week. The Family Court, Lucknow is directed to dispose of the divorce petition expeditiously, as early as possible, in terms of the consent and the compromise.

15. We direct the parties to file the copy of this order before the Family Court, Lucknow and the Family Court, Lucknow shall dispose of the Case No. D-46 of 2011, which has been transferred from Family Court, Mumbai to Family Court, Lucknow in terms of the compromise, arrived at between the parties, as stated hereinabove. As per the terms of the compromise, all the criminal and civil cases filed by either of the parties before the Criminal and Civil Courts, relating to the matrimonial dispute, or the dispute relating to two minors, shall stand withdrawn. The parties are directed to file certified copy of this order before the appropriate Court for passing appropriate consequential order. With the aforesaid observations/directions, the special appeal is accordingly disposed of.