



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 10th August, 2023**
+ CONT.CAS(C) 498/2023
VINEETA DAULET SINGH Petitioner
Through: Ms. Satakshi Sood and Mr. Yash
Srivastava, Advocates
versus
BIKKRAMA DAULET SINGH Respondent
Through: Mr. Prabhjit Jauhar, Ms. Rosemary
Raju, Ms. Ajunee Singh, Ms. Gauri
Rajput, Mr. Bhanu Thakur and Mr.
Ranveer Talwar, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Sections 12 and 14 of the Contempt of Courts Act, 1971 (hereinafter “the Contempt Act”) has been filed on behalf of the petitioner seeking the following reliefs:

- “a. Initiate contempt proceedings under the Contempt of Courts Act, 1971 against the Respondent/Contemnor;*
- b. Punish the Respondent/Contemnor for the wilful disobedience of the Order dated 29.11.2021 passed by this Hon’ble Court in MAT App. (FC) No. 102 of 2021;*
- c. Pass any such other/further orders as this Hon’ble Court may deem fit and appropriate in the facts and circumstances of the present case.”*



2. The record before this Court reveals that the marriage between the parties was solemnised on 2nd January 2013, and out of the wedlock two children were born, a daughter and a son. However, subsequently the parties started to live separately since 7th October 2020 due to temperamental issues between them. During the time that the parties were separated, several litigations were initiated between them, which included the following:

- a. Petition by the respondent for Permanent Custody and Guardianship, bearing GP No. 23/2020, before the Family Court, Patiala House Courts, New Delhi.
- b. Complaint case by the petitioner under the Protection of Women from Domestic Violence Act, 2005, bearing CC No. 5962/2020, before the CMM, Saket Court, New Delhi.
- c. Petition by the respondent under the Hindu Marriage Act, 1955, bearing HMA No. 647/2021, before the Family Court, Patiala House Courts, New Delhi.
- d. Petition by the petitioner under the Hindu Marriage Act, 1956, bearing HMA No. 689/2021, before the Family Court, Patiala House Courts, New Delhi.
- e. Criminal complaint by the petitioner before the Crime against Women Cell, Malviya Nagar.

3. In the Guardianship Petition No. 23/2020, the respondent had filed an application under Section 12 of the Guardian and Wards Act, 1890 seeking



an interim arrangement regarding the custody and visitation rights of the children. In the said application, the learning Family Court passed the order dated 9th October 2021, whereby the application was allowed. Against the said order, the petitioner herein preferred an appeal before this Court by way of filing MAT. APP. (F.C.) No. 102/2021. The Division Bench of this Court in the said appeal suggested the parties to explore the possibility of an amicable settlement.

4. Consequently, the parties were able to reach to an amicable conclusion and a Settlement Agreement thereto was entered into between the parties on 27th November 2021. *Vide* the Settlement Agreement, the parties mutually decided to withdraw all pending litigations against each other and to file for divorce by mutual consent under the Hindu Marriage Act, 1955. The MAT. APP. (F.C.) No. 102/2021 was disposed of by the Division Bench of this Court in view of the Settlement arrived at between the parties.

5. In pursuance of the Settlement, the parties withdrew their pending litigations and also filed for divorce by mutual consent and moved the First Motion before the Patiala House Courts, New Delhi, which was allowed *vide* order dated 18th February 2022. However, thereafter, the Second Motion petition has not been moved before the appropriate Court and the petitioner is aggrieved by the alleged inaction on behalf of the respondent.

6. The moot contention and claim raised by the petitioner before this Court is that, in accordance with Clause 10 of the Settlement dated 27th November 2021 and the order of the Division Bench of this Court binding



the parties to the Settlement Agreement, the parties were to file a joint application for waiver of the intervening statutory period of six months, however, despite several attempts to persuade the respondent to move the Second Motion, the respondent/alleged contemnor is not honouring the terms of the Settlement Agreement and the order passed by the Division Bench this Court.

7. The learned counsel appearing on behalf of the petitioner submitted that the Settlement Agreement entered into between the parties on 27th November 2021 required the parties to file a petition for divorce by mutual consent, for which first motion was moved and allowed. Thereafter, the petitioner made attempts to pursue the respondent to file for the Second Motion, however, the respondent did not take any definitive steps to do the same. It is submitted that even after expiry of six months, the respondent has not been cooperating for filing the Second Motion.

8. It is submitted that upon not getting any positive response from the respondent, the petitioner sent an email dated 19th October 2022 and a subsequent legal notice dated 13th February 2023, however, despite receipt of the such communications the respondent neither responded and nor took any steps to comply with the order dated 29th November 2021.

9. The learned counsel submitted that the respondent is deliberately and with *mala fide* intent not obeying the terms of the Settlement Agreement or the orders of this Court. Therefore, it is prayed that the contempt proceedings may be initiated against the respondent.



10. *Per Contra*, the learned counsel appearing on behalf of the respondent/alleged contemnor vehemently opposed the instant contempt petition and submitted that there is no case made out by the petitioner for initiation of contempt proceedings against the respondent.

11. It is submitted that admittedly the respondent has complied with the terms of the Settlement Agreement entered into between the parties. The respondent withdrew all the pending cases initiated by him, including the petition for divorce on the ground of adultery and cruelty and as such acted in accordance with the Settlement Agreement.

12. It is also submitted that the only grievance of the petitioner before this Court is that the petition for Second Motion has not been filed due to the non-cooperation of the respondent, however, the law regarding this position stands settled that even if a party has given an undertaking to file for second motion, it has the right to rethink or renege under Section 13B(2) of the Hindu Marriage Act, 1955. It is submitted that such an exercise of discretion cannot be termed to be opposed to the public policy or contemptuous. To give force to his arguments, the learned counsel appearing on behalf of the respondent relied upon judgments of this Court.

13. It is further submitted that the respondent is entitled to reconsider and rethink about the decisions regarding his marital ties to ensure the best interest and welfare of his children. Therefore, there is no ground for initiation of contempt proceedings against the respondent.



14. Heard learned counsel for the parties in detail and at length.

15. The petitioner before this Court has invoked Sections 12 and 14 of the Contempt Act to allege that the respondent has not complied with the orders of this Court binding him to the terms agreed between the parties *vide* the Settlement Agreement dated 27th November 2021.

16. The law regarding contempt of courts, especially civil contempt, which is the subject matter of the instant petition, is settled and is no more *res integra*. This Court, as well as the Hon'ble Supreme Court, has time and again settled and reiterated the principles governing the law regarding contempt of courts. Since the petitioner has invoked civil contempt proceedings against the respondent/alleged contemnor, the relevant provisions and the principle in its entirety are deemed necessary to be reproduced and appreciated to ascertain the responsibility and liability of the parties *vis-à-vis* the orders passed by this Court.

17. The term 'civil contempt' has been elaborated to include 'wilful disobedience' of any judgment, decree, direction, order, writ or other process of court and also a wilful breach of any undertaking given before and to a court, as per the terms laid under Section 2 (b) of the Contempt Act. The definitions laid down in the Contempt Act are reproduced hereunder:

"2. Definitions-

(a) "contempt of court" means civil contempt or criminal contempt;

(b) "civil contempt" means wilful disobedience to any



judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;”

18. Civil contempt has been defined as mentioned above under Section 2(b) of the Contempt Act and subject the wilful disobedience to any judgment, decree, direction, order, writ or other process of a court of wilful breach of an undertaking given to a court to the rigours of the Act. A person is held to be in civil contempt when he is found to have been ‘wilfully’ ‘disobeying’ any order of the court or ‘wilfully’ ‘breaching’ any undertaking given by him to the court, the principal keyword being ‘wilful’.

19. Further, Section 12 of the Contempt Act, which has been invoked by the petitioner, provides for the punishment for contempt of court. The Act *inter alia* lays down that a contemnor, committing the act of contempt as defined under the Act, may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both. Section 14 of the Contempt Act, on the other hand, reads as under:

“14. Procedure where contempt is in the face of the Supreme Court or a High Court.—

(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall—

(a) cause him to be informed in writing of the contempt with which he is charged;



(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just.”

20. The aforementioned provision states that the Hon’ble Supreme Court and the High Courts have the power to punish for contempt only when committed in its presence or during the hearing. As such, any act that might be contumacious or contemptuous but has not been committed in the presence of or during the hearing before the aforementioned Courts, is outside the purview of this Section.

21. Admittedly, in the instant matter, it is not the case of the petitioner that the respondent has committed contempt of Court during hearing before any Court or in its presence. The entire case of the petitioner is built on the Settlement Agreement entered into between the parties followed by the order of the Division Bench. Hence, at the very outset, it is clear that the case of the petitioner does not fall within the scope of Section 14 of the Contempt Act and the question which, thus, remains is whether the inaction of the respondent in not giving his consent for moving the petition for Second Motion for divorce amounts to contempt of court as per the exhaustive provisions under the Contempt Act.

22. The petitioner has stated that the order dated 29th November 2021,



passed by the Division Bench of this Court in the MAT. APP. (F.C.) 102/2021, bound the parties to the Settlement Agreement entered into between them on 27th November 2021. The relevant portion of the said order is reproduced hereunder:

“The parties have arrived at a settlement. A copy of the agreements settlement dated 27.11.2021 has been produced before us. The same bears the signature of both parties. Both counsels state that their clients have arrived at the said agreement out of their own free will and accord and they have instructions to state that the parties shall abide by the said agreement.

Both the parties shall remain bound by the terms of settlement as contained in the settlement agreement dated 27.11.2021.”

23. The contents of the order show that the Court observed that the parties shall be bound by the Settlement Agreement signed by them. There are no specific directions or obligations placed upon the parties which flowed from the Court itself in the said order. The Court merely reiterated that the obligation created by the parties themselves shall be abided by them. It may hence be said that a passive observation was made by the Court and an active direction was not passed in the said order, which the petitioner has alleged has been disobeyed by the respondent. Nevertheless, the question which falls for consideration is whether the respondent, in his inaction to give consent for moving the Second Motion petition, may be held in contempt of the court's order.

24. Upon considering the facts and contentions raised on behalf of the



parties, this Court shall proceed to adjudicate upon the question, what amounts to ‘civil contempt’ and thereafter, to examine whether in the instant case, civil contempt is made out against the respondent.

25. As discussed above, civil contempt is defined under Section 2(b) of the Contempt Act to mean wilful disobedience to any judgment, decree, direction, order, writ or other process of a court of wilful breach of an undertaking given to a court. While elaborating the principle under the Contempt Act with regard to the element of will and intention, the Hon’ble Supreme Court reiterated the position of law in the matter of ***Dinesh Kumar Gupta vs. United India Insurance Co. Ltd., (2010) 12 SCC 770***, and observed as under:

“9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice.”



11. No person can defy the court's order. Wilful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of the court's order must allege deliberate or contumacious disobedience of the court's order.”

26. The Hon’ble Supreme Court emphasized on the principle that the court adjudicating a contempt petition shall be satisfied that there is a ‘clear’ violation of the order passed by it. The contempt proceedings have a far-reaching bearing and consequence on the parties involved, hence, according to the Hon’ble Supreme Court, the powers of holding a party liable in contempt of Court should be invoked only when a definite and clear case of wilful disobedience of a Court's order is made out. It has also been categorically stated by the Hon’ble Supreme Court that the element of will and intention excludes casual, accidental, *bona fide* or unintentional acts or genuine inability to comply with the terms of the order.

27. Further, in the landmark judgment passed in ***Rama Narang vs. Ramesh Narang, (2021) 15 SCC 338***, the Hon’ble Supreme Court reiterating the position of law regarding presence of the element of intent held as under:

“86. Apart from that, for bringing an action for civil contempt, the petitioner has to satisfy the court that there has been a wilful disobedience of any judgment, decree, direction, order, writ or other process of the court. It will be relevant to refer to para 9 of the judgment of this court in Niaz Mohammad v. State of Haryana [Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332] : (SCC p. 337, para 9)



“9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”) defines “civil contempt” to mean ‘wilful disobedience to any judgment, decree, direction, order, writ or other process of a court ...’. Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemnor, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under the Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemnor should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemnor is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such



contemnor is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the court may not punish the alleged contemnor.”

87. It can thus be seen that this Court has held that the contempt proceeding is not like an execution proceeding under the Code of Civil Procedure. It has been held that though the parties in whose favour an order has been passed is entitled to the benefits of such order, but the Court while considering the issue as to whether the alleged contemnor should be punished for not having complied with and carried out the directions of the Court has to take into consideration all facts and circumstances of a particular case. It has been held that is why the framers of the Act while defining civil contempt have said that it must be wilful disobedience of any judgment, decree, direction, order, writ or other process of the Court. It has been held that before punishing the contemnor for non-compliance of the decision of the Court, the Court must not only be satisfied about the disobedience of any judgment, decree, direction, writ or other process but should also be satisfied that such disobedience was wilful and intentional. Though, the civil court while executing a decree against the judgment-debtor is not concerned and bothered as to whether the disobedience to any judgment or decree was wilful and once the decree had been passed, it was the duty of the court to execute the decree, whatever may be the consequences thereof. In a contempt proceeding before a contemnor is held guilty and punished, the Court has to record a finding, that such disobedience was wilful and intentional. It has been held that if from the circumstances of a particular case, though the Court is satisfied that there has



been a disobedience but such disobedience is the result of some compelling circumstances, under which it is not possible for the contemnor to comply with the same, the Court may not punish the alleged contemnor.

88. It will also be apposite to refer to the following observations of this Court in Kanwar Singh Saini v. High Court of Delhi [Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307 : (2012) 2 SCC (Civ) 497 : (2012) 2 SCC (Cri) 423] , taking a similar view : (SCC pp. 323-24, para 30)

“30. In an appropriate case where exceptional circumstances exist, the court may also resort to the provisions applicable in case of civil contempt, in case of violation/breach of undertaking/judgment/order or decree. However, before passing any final order on such application, the court must satisfy itself that there is violation of such judgment, decree, direction or order and such disobedience is wilful and intentional. Though in a case of execution of a decree, the executing court may not be bothered whether the disobedience of the decree is wilful or not and the court is bound to execute a decree whatever may be the consequence thereof. In a contempt proceeding, the alleged contemnor may satisfy the court that disobedience has been under some compelling circumstances, and in that situation, no punishment can be awarded to him. (See Niaz Mohammad v. State of Haryana [Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332]; Bank of Baroda v. Sadruddin Hasan Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] and Rama Narang v. Ramesh Narang [Rama Narang v. Ramesh Narang, (2006) 11 SCC 114].) Thus, for violation of a judgment or decree provisions of the criminal contempt are not attracted.”

28. Therefore, as stated above, the party seeking to invoke contempt



proceedings against the other must not only satisfy the court about the disobedience of any judgment, decree, direction, writ or other process but should satisfy that such disobedience was wilful and intentional. Furthermore, the Hon'ble Supreme Court held that in circumstances of a particular case, although the Court may be satisfied that there has been a disobedience but where such disobedience is the result of some compelling circumstances, under which it is not possible for the contemnor to comply with the same, the Court may not punish or take any legal action against the alleged contemnor.

29. While discussing the implications of the Contempt Act and the penalties therein, the Hon'ble Supreme Court in ***Dinesh Kumar (Supra)***, further held as under:

“23. Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out under Section 2(b) of the Contempt of Courts Act, 1971 that the disobedience to the order alleging contempt has to satisfy the test that it is a wilful disobedience to the order. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.”

30. The observations of the Hon'ble Supreme Court in the abovesaid



paragraph make it evident that a case for civil contempt would not lie against a party if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance, which would depend on the facts and circumstances of each case.

31. Having appreciated the definition and scope of civil contempt and wilful disobedience as laid down by the Hon'ble Supreme Court, the consideration now lies before this Court whether the circumstances in the instant petition would fall under the exception laid down by the Hon'ble Supreme Court being exclusion of cases where there is a scope for a reasonable interpretation and consequently, whether there is wilful disobedience on the part of the respondent.

32. The petitioner claims that for the reason of the respondent not providing his consent to file the Second Motion for divorce sought by the parties under Section 13B of the Hindu Marriage Act, 1955, he is liable to be held guilty of contempt of court. The respondent, admittedly, did not file any application for waiver of the intervening period for moving the Second Motion and neither granted his consent for filing the Second Motion petition in accordance with Section 13B(2) of the Hindu Marriage Act, 1955. A derogation of the terms of a settlement agreement or anundertaking, may not by default hold the derogating party in contempt. As discussed above, among other considerations, it would also fall upon the Court to consider whether the contravening party is protected by the law itself to disobey the orders of the court. To adjudge this question, in the background of the facts



and circumstances of the instant case, it is necessary to look into the provisions of the Hindu Marriage Act, 1955 and the implications and bearing it has on the parties involved.

33. The relevant provision under the Hindu Marriage Act, 1955 reads as under:

“13B. Divorce by mutual consent.—

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

34. The provision for divorce for mutual consent was introduced after almost a decade of the Hindu Marriage Act, 1955 coming into force. The amendment provided the liberty to the parties to a marital bond to approach a district court and seek a decree of dissolution of marriage on the ground



that they have mutually agreed that their marriage should be dissolved. The Section reproduced above expressly notes that the second motion by both the parties may be moved only after expiry of six months and before the lapse of eighteen months from the date of presentation of the petition for divorce by mutual consent. The provision for a minimum cooling off period of six months has been included in the Hindu Marriage Act, 1955 with the intent to give a considerable time to the parties to reconsider/rethink upon their decision and also as an attempt to uphold, protect and encourage the values of a family bond, especially when interest and welfare of minor children is in question.

35. The position for the statutory period provided under Section 13B of the Hindu Marriage Act, 1955 has been elaborated upon by the Hon'ble Supreme Court. In *Sureshta Devi vs. Om Prakash*, (1991) 2 SCC 25, in somewhat similar circumstances, which are before this Court, the following observations were made:

“10. Under sub-section (2) the parties are required to make a joint motion not earlier than six months after the date of presentation of the petition and not later than 18 months after the said date. This motion enables the court to proceed with the case in order to satisfy itself about the genuineness of the averments in the petition and also to find out whether the consent was not obtained by force, fraud or undue influence. The court may make such inquiry as it thinks fit including the hearing or examination of the parties for the purpose of satisfying itself whether the averments in the petition are true. If the court is satisfied that the consent of parties was not obtained by force, fraud or undue influence and they have



mutually agreed that the marriage should be dissolved, it must pass a decree of divorce.

11. The question with which we are concerned is whether it is open to one of the parties at any time till the decree of divorce is passed to withdraw the consent given to the petition. The need for a detailed study on the question has arisen because of the fact that the High Courts do not speak with one voice on this aspect. The Bombay High Court in Jayashree Ramesh Londhe v. Ramesh Bhikaji Londhe [AIR 1982 Bom 302 : 86 Bom LR 184] , has expressed the view that the crucial time for the consent for divorce under Section 13-B was the time when the petition was filed. If the consent was voluntarily given it would not be possible for any party to nullify the petition by withdrawing the consent. The court has drawn support to this conclusion from the principle underlying Order 22 Rule 1 of the Code of Civil Procedure which provides that if a suit is filed jointly by one or more plaintiffs, such a suit or a part of a claim cannot be abandoned or withdrawn by one of the plaintiffs or one of the parties to the suit. The High Court of Delhi adopted similar line of reasoning in Chander Kanta v. Hans Kumar [AIR 1989 Del 73] and the Madhya Pradesh High Court in Meena Dutta v. Anirudh Dutta [(1984) 2 DMC 388 (MP)] also took a similar view.

12. But the Kerala High Court in K.I. Mohanan v. Jeejabai [AIR 1988 Ker 28 : (1986) 2 HLR 467 : 1986 KLT 990] and the Punjab and Haryana High Court in Harcharan Kaur v. Nachhattar Singh [AIR 1988 P & H 27 : (1987) 2 HLR 184 : (1987) 92 Punj LR 321] and Rajasthan High Court in Santosh Kumari v. Virendra Kumar [AIR 1986 Raj 128 : (1986) 1 HLR 620 : 1986 Raj LR 441] have taken a contrary view. It has been inter alia, held that it is open to one of the spouses to withdraw the consent given to the petition at any time before the court passes a decree for divorce. The satisfaction of the court after holding an inquiry about the genuineness of the consent,



necessarily contemplates an opportunity for either of the spouses to withdraw the consent. The Kerala High Court in particular has ruled out the application of analogy under Order 23 Rule 1 of the Code of Civil Procedure since it is dissimilar to the situation arising under Section 13-B of the Act.

13. From the analysis of the section, it will be apparent that the filing of the petition with mutual consent does not authorise the court to make a decree for divorce. There is a period of waiting from 6 to 18 months. This interregnum was obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The spouse may not be a party to the joint motion under sub-section (2). There is nothing in the section which prevents such course. The section does not provide that if there is a change of mind it should not be by one party alone, but by both. The High Courts of Bombay and Delhi have proceeded on the ground that the crucial time for giving mutual consent for divorce is the time of filing the petition and not the time when they subsequently move for divorce decree. This approach appears to be untenable. At the time of the petition by mutual consent, the parties are not unaware that their petition does not by itself snap marital ties. They know that they have to take a further step to snap marital ties. Sub-section (2) of Section 13-B is clear on this point. It provides that “on the motion of both the parties. ... if the petition is not withdrawn in the meantime, the court shall ... pass a decree of divorce ...”. What is significant in this provision is that there should also be mutual consent when they move the court with a request to pass a decree of divorce. Secondly, the court shall be satisfied about the bona fides and the consent of the parties. If there is no mutual consent at the time of the enquiry, the court gets no jurisdiction to make a decree for divorce. If the view is otherwise, the court could make an enquiry and pass a divorce decree even at the



instance of one of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent.

14. Sub-section (2) requires the court to hear the parties which means both the parties. If one of the parties at that stage says that “I have withdrawn my consent”, or “I am not a willing party to the divorce”, the court cannot pass a decree of divorce by mutual consent. If the court is held to have the power to make a decree solely based on the initial petition, it negates the whole idea of mutuality and consent for divorce. Mutual consent to the divorce is a sine qua non for passing a decree for divorce under Section 13-B. Mutual consent should continue till the divorce decree is passed. It is a positive requirement for the court to pass a decree of divorce. “The consent must continue to decree nisi and must be valid subsisting consent when the case is heard”. [See (i) Halsbury's Laws of England, 4th edn., vol. 13 para 645; (ii) Rayden on Divorce, 12th edn., vol. 1, p. 291; and (iii) Beales v. Beales [(1972) 2 All ER 667, 674]].

15. In our view, the interpretation given to the section by the High Courts of Kerala, Punjab and Haryana and Rajasthan in the aforesaid decisions appears to be correct and we affirm that view. The decisions of the High Courts of Bombay, Delhi and Madhya Pradesh (supra) cannot be said to have laid down the law correctly and they stand overruled.”

36. Echoing the intent and objective of the Section 13B of the Hindu Marriage Act, 1955, the Hon’ble Supreme Court, in the aforesaid judgment which was also reaffirmed in ***Hitesh Bhatnagar vs. Deepa Bhatnagar, (2011) 5 SCC 234***, observed that the statutory transitional period is important for the Court to find out whether the consent with which the parties seeking divorce by mutual consent is genuine or has been obtained by force, fraud or undue influence. The Hon’ble Court was of the view that



the period during which the Court holds an inquiry into the veracity and authenticity also provides an opportunity to the parties to contemplate confirmation or withdrawal of the consent furnished by it for the dissolution of marriage. While rightly appreciating the intent, objective and the bare language of the Section, it was held that there is nothing in the said provision that prevents the contemplation to change mind regarding dissolution of one's marriage.

37. The Hon'ble Supreme Court in *Amardeep Singh vs. Harveen Kaur*, (2017) 8 SCC 746, also expressed its stance upon the nature of Section 13B of the Hindu Marriage Act, 1955 and held as under:

“15. The court must be satisfied that the parties were living separately for more than the statutory period and all efforts at mediation and reconciliation have been tried and have failed and there is no chance of reconciliation and further waiting period will only prolong their agony.

16. We have given due consideration to the issue involved. Under the traditional Hindu Law, as it stood prior to the statutory law on the point, marriage is a sacrament and cannot be dissolved by consent. The Act enabled the court to dissolve marriage on statutory grounds. By way of amendment in the year 1976, the concept of divorce by mutual consent was introduced. However, Section 13-B(2) contains a bar to divorce being granted before six months of time elapsing after filing of the divorce petition by mutual consent. The said period was laid down to enable the parties to have a rethink so that the court grants divorce by mutual consent only if there is no chance for reconciliation.

17. The object of the provision is to enable the parties to



dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling-off period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.

18. In determining the question whether provision is mandatory or directory, language alone is not always decisive. The court has to have the regard to the context, the subject-matter and the object of the provision. This principle, as formulated in Justice G.P. Singh's Principles of Statutory Interpretation (9th Edn., 2004), has been cited with approval in Kailash v. Nanhku [Kailash v. Nanhku, (2005) 4 SCC 480] as follows : (SCC pp. 496-97, para 34)

“34. ... ‘The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oftquoted passage Lord Campbell said: “No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered.”’” (p. 338)



“For ascertaining the real intention of the legislature’, points out Subbarao, J. ‘the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered’. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory.” (pp. 339-40)

19. *Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:*

(i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;

(ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) the parties have genuinely settled their differences



including alimony, custody of child or any other pending issues between the parties;

(iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.

20. Since we are of the view that the period mentioned in Section 13-B(2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.”

38. The settled position of law that the provision of the transitional or cooling of period is directory and mandatory does not operate on its own. It is extremely pertinent to reiterate that in a petition for divorce by mutual consent, the key words are ‘*mutual consent*’. The crucial prerequisite of ‘*mutual consent*’ must be expressed before the Court so as to enable a proper consideration before passing the decree dissolving the marriage and hence, the discretion to waive the statutory period shall also operate and be considered while observing the indispensable element of ‘*consent*’.

39. The Division Bench of this Court in ***Dinesh Gulati vs. Ranjana Gulati***, MAT. APP. (F.C.) 70/2016, passed on 2nd August 2016 expressed its view in an issue similar to that before this Court and held as under:

“2. The recourse to the contempt proceedings in the circumstances of the present case as well as the orders passed on 04.04.2016 and 22.07.2014 (order recording joint statement of



the parties) is baffling given that it completely neglects the mutuality aspect as provided for under Section 13B. It is not understandable how the court through its order initiated the coercive process of contempt proceedings, foreclosed the choice which the parties have by virtue of the mechanism under Section 13-B – to award mutual consent divorce in two stages. To put it differently – through the impugned order, the parties’ right to step back at any stage stood negated. If the law permits the parties to rethink and not proceed with mutual consent divorce – a concept which is based upon mutuality, an agreement to divorce cannot be enforced in a manner that is sought to be done in the present case. It is settled law that even if a compromise is embodied in an order, its essential characteristics of being founded on a contract that casts upon an enforceable contract, is not in any manner undermined. If this essential reality is lost sight of, the parties may be faced with dangerous consequences – unintended legal result i.e. a residuary ground of divorce otherwise not thought of by Parliament or made into a separate ground for dissolution of marriage.”

40. The above view of this Court reaffirms the requisite of consent and the provision for an intervening period to the parties seeking dissolution of marriage. The Court was of the strong view that the aspect of mutuality may not be negated if the parties are before a Court for dissolution of their marriage by mutual consent.

41. The Division Bench of this Court in ***Rajat Gupta v. Rupali Gupta***, **2018 SCC OnLine Del 9005**, adjudicated the issues pertaining to filing of an undertaking for moving the motions for dissolution of marriage by mutual consent.

“33. It can be seen from the above that the Supreme Court has



held that mutual consent is an indispensable condition for passing a decree of divorce under Section 13B of the Act and such a mutual consent should continue from the time of filing the First motion petition, till the divorce decree is passed and the marital ties finally snapped. The underlying thread of Section 13B is the mutuality aspect, a factor that should remain in force from the starting point i.e., the date when the parties jointly file the First motion petition under Section 13B(1) to the stage when they file the Second motion petition under Section 13B(2), till a final decree for divorce by mutual consent is granted by the concerned court.”

42. In the said judgment, the Division Bench of this Court was of the considered opinion that contempt proceedings may be initiated against the party who may default in any undertaking given by it regarding filing a petition or either of the motions for dissolution of marriage by mutual consent, however, it was also of the view that any Court, even in the contempt proceedings cannot compel a party to furnish its consent for divorce by mutual consent. To this effect the Court held as under:

*“60. **Question** (A) Whether a party, which has under a settlement agreement decreed by a Court undertaken to file a petition under Section 13B(1) or a motion under Section 13B(2) of the Act, 1955 or both and has also undertaken to appear before the said Court for obtaining divorce can be held liable for contempt, if the said party fails to file or appear in the petition or motion or both to obtain divorce in view of the option to reconsider/renege the decision of taking divorce by mutual consent under Section 13B(2) of the Act?*

***Answer:** (a) The answer to Question (A) is yes. The distinguishing feature of Section 13B of the Act, 1955 is that it recognizes the unqualified and unfettered right of a party to*



unilaterally withdraw the consent or reconsider/renege from a decision to apply for divorce by mutual consent, notwithstanding any undertaking given in any legal proceeding or recorded in any settlement/joint statement, in or outside the court, resulting in a consent order/decree, to cooperate with the other spouse to file a petition under Section 13B(1) or a second motion under Section 13B(2) of the Act, or both. Withdrawal of the consent even at the stage of the enquiry, as contemplated under Section 13B(2), is also in exercise of the right available to a party under the very same provision. In other words, the mutuality of the consent to divorce should commence from the stage of filing the First motion under Section 13B(1) and it should continue at the time of moving the Second motion under Section 13B(2) of the Act, till such time that the court completes the enquiry and a decree of divorce is finally passed. The said element of mutual consent is a sine qua non for passing a decree of divorce. This being the legal position, the defaulting party cannot be compelled to file or appear in the petition or motion or both, to obtain divorce by mutual consent.

(b) Any other view will not only impinge on the jurisdiction of the court which has an obligation under the Statute to undertake an independent enquiry before passing a decree of divorce by mutual consent, it will also encroach upon a statutory right vested in a party under Section 13B(2) of the Act and go against the very spirit of the provision, at the heart of which lies the right of a party to reflect/revisit and retract from its decision of going ahead for grant of divorce by mutual consent, during the cooling off period.

(c) At the same time, a defaulting party can be held liable for civil contempt on the ground of breaching the terms and conditions incorporated in an undertaking given to the court or made a part of a consent order/decree. In the event the aggrieved party approaches the court for initiation of contempt proceedings against the defaulting party for willful/deliberate



breach of any of the terms and conditions of an undertaking/settlement agreement/consent order or a decree and takes a plea that as a consequence thereof, he/she has been placed in a disadvantageous position or has suffered an irreversible/grave prejudice, the court in exercise of its inherent powers of contempt, supplemented by the 1971 Act has the requisite jurisdiction to entertain the petition and direct restoration of status quo ante in every possible way. Besides directing the defaulting party to disgorge all the benefits/advantages/privileges that have/would have enured in its favour and restoring the parties to the position that was before they had arrived at such a settlement/agreement/undertaking and/or before the consent order/decreed was passed in terms of the settlement arrived at/undertakings recorded, the court has the discretion to punish the defaulting party for civil contempt, depending on the facts of a given case. Thus, contempt jurisdiction operates in a different field and is uninfluenced by the fetters imposed on a court under the Act of 1955. The only rider to the above is that no direction can be issued even in contempt proceedings to compel the defaulting party to give its consent for a decree of divorce by mutual consent, as it is opposed to the object, policy and intent of Section 13B of the Hindu Marriage Act.

61. Question (B) *Whether by undertaking before a Court to file a second motion under Section 13B(2) of the Act, 1955 at Section 13B(1) stage or by giving an undertaking to a Court to that effect in a separate court proceeding, a party waives its right to rethink/renege under 13B(2) of the Act, 1955? If yes, whether such right can be waived by a party under Section 13B(2) of the Act, 1955?*

Answer:*(a) The answer to the first limb of Question (B) is no. Notwithstanding any undertaking given by a party before a court to file a Second motion under Section 13B(2) or at the Section 13B(1) stage or in any separate court proceedings, its*



right to rethink/renege under Section 13B(2) of the Act, cannot be waived for the reason that such a waiver is proscribed by the Statute that keeps a window open for the parties to withdraw their consent at any stage till the decree of divorce is finally granted. The element of mutual consent remains the leitmotif of the said provision and its existence is a salient and recurring theme that like warp and weft, weaves its way through the entire process set into motion at the Section 13B(1) stage, followed by the Section 13B(2) stage, till the very end when a decree of divorce is granted. The right of withdrawal of consent in the above proceedings can be exercised at any stage and exercise of such a discretion cannot be treated as being opposed to public policy. Any other interpretation given to the aforesaid provision would negate the underlying aim, object and intent of the said provision. Once a party decides to have a second thought and on reflection, backs off, the concerned court cannot compel the defaulting party to give its consent on the basis of an earlier settlement/undertaking.

(b) In view of the answer given to the first limb of Question (B), the second limb of the said question needs no answer.”

(emphasis supplied)

43. The sum and substance of the view of this Court is that the very foundation of Section 13B of the Hindu Marriage Act, 1955 is based upon the key element of ‘consent’ which may neither be compelled to be waived nor be compelled to be observed. The consent of the parties, either or both, in such cases shall be considered to be the last word. The liberty to furnish, withdraw, and contemplate or reconsider operates and lies with the parties from the day of filing the petition till the day decree is passed. The core objective and purpose of the provision shall fail if a party is coerced to provide its consent for obtaining a decree of dissolution of marriage under



Section 13B of the Hindu Marriage Act, 1955.

44. Recently, in the judgment passed in *Shilpa Sailesh vs. Varun Sreenivasan*, 2023 SCC OnLine SC 544, the Hon'ble Supreme Court deliberated upon the extent of powers and jurisdiction under Article 142 of the Constitution of India with the Hon'ble Supreme Court to waive or reduce the statutory period as stipulated under Section 13B of the Hindu Marriage Act, 1955. While the scope of powers under Article 142 is much wider than the powers of this Court, the basic tenets elaborated upon and extensively considered by the Hon'ble Supreme Court may be applicable on the discussion in the instant case as well. The relevant portion of the observations by the Hon'ble Supreme Court are as under:

“20. Sub-section (2) to Section 13-B of the Hindu Marriage Act provides that after the first motion is passed, the couple/parties would have to move to the court with the second motion, if the petition is not withdrawn in the meanwhile, after six months and not later than eighteen months of the first motion. No action can be taken by the parties before the lapse of six months since the first motion. When the second motion is filed, the court is to make an inquiry, and on satisfaction that the averments made in the petition are true, a decree of divorce is granted. Clearly, the legislative intent behind incorporating sub-section (2) to Section 13-B of the Hindu Marriage Act is that the couple/party must have time to introspect and consider the decision to separate before the second motion is moved. However, there are cases of exceptional hardship, where after some years of acrimonious litigation and prolonged suffering, the parties, with a view to have a fresh start, jointly pray to the court to dissolve the marriage, and seek waiver of the need to move the second motion. On account of irreconcilable differences,



allegations and aspersions made against each other and the family members, and in some cases multiple litigations including criminal cases, continuation of the marital relationship is an impossibility. The divorce is inevitable, and the cooling off period of six months, if at all, breeds misery and pain, without any gain and benefit. These are cases where the object and purpose behind sub-section (2) to Section 13-B of the Hindu Marriage Act to safeguard against hurried and hasty decisions are not in issue and question, and the procedural requirement to move the court with the second motion after a gap of six months acts as an impediment in the settlement. At times, payment of alimony and permanent lump-sum maintenance gets delayed, while anxiety and suspicion remain. Here, the procedure should give way to a larger public and personal interest of the parties in ending the litigation(s), and the pain and sorrow effected, by passing a formal decree of divorce, as de-facto the marriage had ended much earlier.

22. The time gap is meant to enable the parties to cogitate, analyse and take a deliberated decision. The object of the cooling off period is not to stretch the already disintegrated marriage, or to prolong the agony and misery of the parties when there are no chances of the marriage working out. Therefore, once every effort has been made to salvage the marriage and there remains no possibility of reunion and cohabitation, the court is not powerless in enabling the parties to avail a better option, which is to grant divorce. The waiver is not to be given on mere asking, but on the court being satisfied beyond doubt that the marriage has shattered beyond repair. The judgment in Amardeep Singh (supra) refers to several questions that the court would ask before passing an order one way or the other. However, this judgment proceeds on the interpretation of Section 13-B(2) of the Hindu Marriage Act, and does not examine whether this Court can take on record a settlement agreement and grant divorce by mutual consent under Section 13-B of



the Hindu Marriage Act in exercise of the power under Article 142(1) of the Constitution of India.

23. We must acknowledge that this Court has very often entertained applications/prayers for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, and passed a decree of divorce without relegating or asking the parties to move a joint motion before the trial court. In such cases, other pending proceedings between the parties, civil and criminal, are appropriately dealt with in terms of the settlement, and are decreed, quashed or closed accordingly. This situation arises when proceedings are pending in this Court against an interim or a final order passed in a judicial proceeding, or on a transfer petition being filed before this Court. The parties may mutually agree to dissolve the marriage, albeit on many occasions they enter into settlements, often through mediation or on being prompted by the Court. In matrimonial matters, settlement, and not litigation, is the preferable mode of dispute resolution.”

45. It is hence well settled, by way of several pronouncements as well as the bare language of the provision itself, in conjoint consideration with the objective and intent of providing the statutory period, that the parties seeking divorce by mutual consent shall not be compelled to furnish or withdraw their consent for a decree of dissolution of marriage since the key and chief component for such a decree is free and unblemished consent. The fact that two parties from a marital tie approach the Court seeking divorce by mutual consent would not stop the Court to exercise its due diligence in inquiring whether the consent so given is free from fraud, coercion and undue influence.

46. Upon a combined consideration of the entire discussion made in the



aforesaid paragraphs, it is evident that the provision for the statutory period from six months to eighteen months has been provided for in the Act of 1955, not only to facilitate the parties to make a considered, well-thought and well-deliberated, calculated and planned decision regarding dissolving their marriage, but also for the Court to examine and adjudge the veracity and genuinity of the consent furnished before the Court. The two-fold objective of the provision has been upheld and affirmed by the Courts, including the Hon'ble Supreme Court, and thus, stands settled.

47. In the instant case, the respondent has not yet furnished his consent for filing the Second Motion petition for the decree of divorce. The consideration before this Court was whether not granting such a consent would amount to contempt. However, after considering the core objective of provisions under the Hindu Marriage Act, 1955 as well as the Contempt of Courts Act, 1971, this Court is of the considered view that merely not providing consent for moving the Second Motion petition in itself will not amount to contempt of the courts' order or direction, since the action/inaction on the part of the respondent cannot be considered to fall under the wilful 'disobedience' which is an indispensable requirement for making out a case for civil contempt.

48. This Court is also of the opinion that an action/inaction cannot be held to be committed/omitted in wilful disobedience of the Courts' order when the law itself permits for such action/inaction. There is no reason for this Court to not accede to the view expressed by the Courts of the Country and



which has been upheld time and again by the Hon'ble Supreme Court.

49. The order of the Division Bench of this Court bound the parties to the terms of the Settlement and admittedly, the respondent has complied with all the mutually agreed terms of the Settlement Agreement signed between the parties and has withdrawn the cases and complaints filed by him and on his behalf. The only grievance of the petitioner pertained to the non-filing of the petition for Second Motion for divorce, however, it is abundantly and unequivocally clear that the law itself protects the respondent in such situation and circumstances where he may reconsider or withhold his consent for the statutory time period provided to him from six months to eighteen months.

50. There is nothing in the provision which penalizes the respondent for not furnishing his consent for motion or for not applying for a waiver of the statutory period. The stance that the respondent may not be compelled by any Court to furnish his consent for moving Second Motion for divorce certainly does not grant an extraneous benefit to the petitioner to coerce or force the respondent to furnish such no-objection. The respondent has taken the ground of welfare and interest of the minor children of the parties for not consenting to move the Second Motion for divorce, which is a genuine and sincere consideration to be borne in mind while making a decision regarding dissolution of marriage.

51. The respondent can certainly not be penalised for exercising his rights and entitlement. He has the statutory right to reconsider his decision and



consent for obtaining a decree of dissolution of marriage during the intervening period. Hence, an exercise of his rights can in no manner be categorised as wilful disobedience.

52. Therefore, considering the entirety of the matter, the facts, circumstances, objections raised on behalf of the parties, the law laid down, the provisions in place in both the Contempt Act and the Hindu Marriage Act, 1955, this Court does not find any reason to exercise its powers and initiate contempt proceedings against the respondent for the sole reason of him exercising his statutory right of observing the intervening period before moving the Second Motion for divorce. There is nothing to show that the respondent has wilfully disobeyed any order or directions etc. of the Court and hence, this Court is not inclined to allow the prayers made by the petitioner.

53. Therefore, the instant petition being devoid of merit is dismissed along with pending applications, if any.

54. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 10, 2023

gs/ms

Click here to check corrigendum, if any