



2025:DHC:5080-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 28.04.2025
Pronounced on: 01.07.2025

+ CONT.APP.(C) 43/2023 & CM APPL. 41715/2023, CM APPL. 1467/2024, CM APPL. 70780/2024, CM APPL. 4883/2025, CM APPL. 6350/2025

CHHAVI AGARWALAppellant

Through: Appellant in person

versus

ANURAG GOELRespondent

Through: Mr.Prabhjit Jauhar, Ms.
Rosemary Raju and Mr.Seheaj
Kataria, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The present Appeal under Section 19 of the Contempt of Courts Act, 1971 (“the Act”) read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”) has been filed impugning the Order dated 09.08.2023 passed by the learned Single Judge of this Court in Cont. Case (C) No. 1342/2022 titled “*Anurag Goel vs. Chhavi Agarwal*”, finding the appellant guilty of having violated her undertaking to the Court and sentencing her.



2025:DHC:5080-DB



2. The aforementioned contempt petition had been instituted by the respondent/husband, alleging deliberate and wilful disobedience by the appellant/wife of the terms of the Settlement Agreement dated 01.09.2022, as well as the Affidavits-cum-Undertakings filed by the appellant before the learned Family Court, Saket, New Delhi on 03.09.2022. These documents were executed as a part of the petition filed by the parties seeking divorce by mutual consent.

3. Before proceeding to the submissions addressed at the bar, it would be necessary to set out the factual matrix which has led to the filing of the present appeal.

Factual Background:

4. The parties to the appeal were married according to the Hindu customary rites on 25.07.2015 and began cohabiting at Flat No. A-52, Kalpataru Habitat, Dr. S. S. Rao Road, Parel, Mumbai- 400012 (“the Subject Property”). However, due to temperamental differences, the respondent left the matrimonial home on 06.04.2017 and began residing with his parents in Faridabad, Haryana, while the appellant continued residing in the subject Property along with her parents.

5. Consequent to a complaint filed by appellant under the Protection of Women from Domestic Violence Act, 2005 (“DV Act”) bearing no. DV No. 35/2017, *interim* protection orders were passed in her favour by the learned Metropolitan Magistrate, Mumbai (MM).

6. Following the separation, multiple litigation ensued between the parties and their respective families, leading to the filing of nearly



2025:DHC:5080-DB



twenty (20) legal proceedings across various Forums in Delhi and Mumbai, including a divorce petition instituted by the respondent, bearing HMA No. 257/2021, titled “**Anurag Goel vs. Chhavi Agarwal**”, before the learned Family Court, Saket, Delhi, seeking divorce.

7. In view of the multiplicity of proceedings and the absence of any scope of reconciliation, the parties, with the intervention of the learned Family Court, Saket, New Delhi were referred to mediation under the supervision of the Principal Counsellor.

8. After several rounds of discussion and negotiation during the mediation, the parties arrived at an amicable settlement of all disputes. The resultant Settlement Agreement dated 01.09.2022 was comprehensive, spanning fifty-six (56) clauses, and was drawn with legal advice and consultation on both sides.

9. The key features of the said Settlement Agreement included: (a) transfer of the Subject Property by the respondent to the appellant by way of a Gift Deed; (b) payment by the appellant of Rs. 9,91,408.41/- towards closure of the home loan concerning the Subject Property with HSBC Bank; (c) payment of Rs. 13,48,758/- as society maintenance dues by the appellant, with additional dues accrued post 01.09.2022 to be paid by the respondent; (d) upon execution of the Gift Deed, withdrawal of all litigation, and registration formalities were to adhere to a strict timeline. The parties also agreed that the Gift



2025:DHC:5080-DB



Deed would be executed on the same day when their statements for divorce by mutual consent (Second Motion) would be recorded.

10. An affidavit of Undertaking incorporating all terms of the Settlement Agreement, as required by the decision of this Court in *Rajat Gupta v. Rupali Gupta*, 2018 SCC OnLine Del 9005, was filed by the parties before the learned Family Court, Saket on 03.09.2022 along with a joint petition under Section 13B(1) of the Hindu Marriage Act, 1955 (hereinafter referred to as “HMA”).

11. On 14.09.2022, their joint statement was recorded, reaffirming their intent to fully comply with the Settlement Agreement. The learned Family Court, *vide* the Order dated 14.09.2022, accepted the First Motion petition, having satisfied itself of the lawfulness and voluntariness of the settlement.

12. On the date of recording of the joint statement, the appellant handed over a cheque of Rs. 9,91,408/- for the repayment of the Home Loan. The respondent deposited the same with HSBC Bank on 15.09.2022. The Bank issued the Loan Closure Certificate on 23.09.2022, and scanned copies of title and closure documents were shared with the appellant *via* the email dated 29.09.2022.

GENESIS OF THE DISPUTE WITH RESPECT TO THE SETTLEMENT AGREEMENT

13. Upon the acceptance of petition filed under Section 13B(1) by the parties before the learned Family Court, the parties were required to fulfil other terms of the Settlement Agreement as they had agreed to



2025:DHC:5080-DB



after the completion of First Motion proceeding. The respondent was to execute a Gift Deed relating to subject Property in favour of the appellant.

14. Accordingly, a draft Gift Deed was prepared and exchanged between the parties. The version sent by the appellant on 07.10.2022, was confirmed as the final agreed draft by the appellant's counsel on 03.11.2022. However, a dispute arose between the parties concerning the Society documents. The appellant had refused to proceed with the execution of the Gift Deed unless the Kalpataru Habitat Co-operative Housing Society Ltd. furnished certain documents to her, but, the Society refused to release the documents till the outstanding maintenance dues were paid.

15. The total society maintenance dues were quantified to be Rs. 14,61,928/-, of which the appellant had agreed to pay Rs. 13,48,758/- under Clauses 20 and 21 of the Settlement Agreement. However, in an email dated 07.10.2022, the appellant insisted that the respondent must bear all dues accrued after 01.09.2022. Initially opposing this demand, the respondent eventually conceded, *vide* the email dated 05.11.2022, to pay the balance dues for the period after 01.09.2022, which amounted to Rs. 1,13,170/-, and requested the appellant to remit her agreed share directly to the Society.

16. The appellant, *vide* the email dated 09.11.2022, rejected the proposal and asserted that the respondent pay the full Rs. 14,61,928/- to the Society in the first instance. She stated that she would reimburse



2025:DHC:5080-DB



her share of Rs. 13,48,758/- only at the time of execution of the Gift Deed. The respondent viewed this stand as a complete volte-face and contrary to the agreed terms.

17. Between 16.09.2022 and 17.11.2022, a total of fifty-two (52) emails were exchanged between the parties, twenty-nine (29) by the appellant and twenty-three (23) by the respondent, however, an impasse ensued. The appellant refused to move ahead with the execution of the Gift Deed without the requisite Society documents, while the respondent was unwilling to bear the entire burden of the dues owed to the Society.

18. Resultantly, the respondent filed a contempt petition before the learned Single Judge of this Court, alleging wilful non-compliance by the appellant with the terms of the Settlement Agreement as well as the undertakings given before the learned Family Court. The learned Single Judge, *vide* the Impugned Order, held the appellant guilty of committing the offence of civil contempt of the Court under the Act. Being aggrieved whereof, the appellant has preferred the present Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

19. Mr. J.P Sengh, the learned senior counsel, initiated the arguments on behalf of the appellant, however, subsequently, the appellant preferred to address arguments in person.

20. Mr. Sengh submitted that the appellant is currently unemployed and has been without a permanent source of income since 2021. She,



2025:DHC:5080-DB



pursuant to the Orders dated 12.05.2017 and 03.07.2019 passed by the Ld. MM, 15th Court, Sewree, Mumbai in D.V. Complaint. No. 35/2017, resides with her aged and ailing parents at her matrimonial home in Mumbai.

21. He submitted that the Settlement Agreement dated 01.09.2022 executed between the parties was conditional in nature. Clause 42 of the said Agreement specifically provided that the subject Property transfer would be null and void, if the appellant does not fulfil certain obligations, including appearing for the Second Motion, giving her no-objection for quashing of the FIRs, and withdrawing all pending cases.

22. The appellant had already paid Rs. 9,91,408.41/- to the respondent towards the HSBC bank loan on 14.09.2022, and was actively arranging for the payment of maintenance charges of the Society.

23. Mr. Singh submitted that despite repeated requests, the respondent did not provide the complete set of original property documents necessary to finalize the Gift Deed. This non-cooperation on the respondent's part created a *bona fide* apprehension in the appellant's mind regarding the enforceability and genuineness of the promised transfer of ownership of the subject Property by way of a Gift Deed. While drawing our attention to emails dated 10.10.2022, 02.11.2022, 03.11.2022, 05.11.2022, and 12.11.2022, he submitted



2025:DHC:5080-DB



that these emails clearly reflect this state of affairs that there was no reluctance or default on part of the appellant.

24. It was also submitted that during the pendency of the present appeal, the Society, *vide* a notice dated 07.01.2025 addressed to the respondent, had sent a reminder about the pendency of the maintenance charges for the subject Property which had mounted to Rs. 23,88,278/-. Thereafter, a maintenance bill dated 25.01.2025 had also been issued, with total dues amounting to Rs. 25,19,701/-. Additionally, it was highlighted that a demand notice for the recovery of arrears of property tax dated 17.01.2025 had also been issued by the competent authorities against the subject Property. It was submitted that adding to the appellant's distress, her father was diagnosed with cancer and had to undergo urgent surgery in January 2023. Her mother, a paralytic patient, was also undergoing treatment for serious orthopaedic and neurological conditions. In these extraordinary circumstances, the appellant was physically, emotionally, and financially incapacitated from following through with the onerous terms of the Settlement Agreement.

25. He submitted that the learned Single Judge, however, failed to consider the above compelling circumstances and held the appellant guilty of contempt. Placing reliance on *Ashok Paper Kamgar Union v. Dharam Godha & Ors.*, (2003) 11 SCC 1, *Niaz Mohammad & Ors. v. State of Haryana & Ors.*, (1994) 6 SCC 332, *Ram Kishan v. Tarun Bajaj & Ors.*, (2014) 16 SCC 204, and *Sushila Raje Holkar v. Anil Kak (Retired)*, (2008) 14 SCC 392, he submitted that mere non-



cooperative attitude of the appellant cannot be a reason to hold her in contempt. He submits that in order to constitute contempt, the act of the guilty party must be with intent to disobey or disregard the order. It must be deliberate. It should not require any extraordinary effort nor should be dependent upon any act or omission of a third party. He submits that in the present case, the appellant was not in a position to pay the maintenance amount and was not being granted access to the documents of the Society. Therefore, the appellant could not have been held guilty of contempt.

26. Strenuously relying upon the decisions of the Supreme Court in *Sureshta Devi v Om Prakash*, (1991) 2 SCC 25, *Smruti Pahariya v. Sanjay Pahariya*, (2009) 13 SCC 338, *Hitesh Bhatnagar v. Deepa Bhatnagar*, (2011) 5 SCC 234 and; of this Court in *Rajat Gupta* (supra), and *Vineeta Daulet Singh v. Bikkrama Daulet Singh*, 2023:DHC:6192, he submitted that a party has an absolute right to unilaterally withdraw consent before the Second motion for a mutual consent divorce. This right is statutorily protected and cannot be foreclosed by any private settlement or undertaking. She urged, in the absence of continuous consent from both parties till the decree for divorce by mutual consent is passed, the Court lacks jurisdiction to pass a decree of divorce under Section 13B(2) of HMA.

27. He further placed reliance on the judgment of the Supreme Court in *Jhareshwar Prasad Paul v. Tarak Nath Ganguly*, (2002) 5 SCC 352, to submit that the Court, in the guise of exercising jurisdiction under the Act, cannot compel the party to do something or



2025:DHC:5080-DB



grant relief not otherwise flowing from the order of which contempt is alleged.

28. The appellant, in the middle of the submissions being advanced, removed Mr. Sengh and her counsels on record, and filed CM APPL. 70780/2024, seeking permission to address further arguments in person. She was permitted to do so.

29. The appellant submitted that the respondent has a history of financial manipulation and grossly abused the process of law. He allegedly transferred Rs. 9.49 crores to his parents' accounts within three months of leaving the matrimonial home and transferred multiple properties to them in order to evade his legal responsibilities towards the appellant. It is submitted that the appellant was coerced to sign the Settlement Agreement on the threat of eviction and that the respondent also influenced the appellant's counsel.

30. The appellant further reiterated that she has never wilfully disobeyed any Court Order or undertaking furnished by her. Her inability to appear for Second Motion or to fulfil the obligations under the Settlement Agreement arose from circumstances beyond her control, namely, the respondent's breach, her financial distress, medical emergencies in the family, and lack of access to property documents. She submitted that her conduct does not meet the threshold of "wilful disobedience" required to constitute Civil Contempt under Section 2(b) of the Act.



2025:DHC:5080-DB



31. In support of the contentions, the appellant also relied on the Judgements of this Court in *Shikha Bhatia v. Gaurav Bhatia*, 178 2011 DLT 128, and in MAT. APP. (F.C.) 70/2016 titled *Dinesh Gulati v. Ranjana Gulati*.

32. The appellant also placed reliance on the order dated 19.11.2024 passed by the Division Bench of the High Court of Judicature at Bombay in *Anurag Vijaykumar Goel v. The State of Maharashtra & Anr.*, 2024:BHC-AS:44191-DB, to submit that the High Court of Bombay, in the said judgment, has held that it was not the appellant but the respondent who had failed to comply with the terms of the Settlement Agreement. The High Court further held that the act of the appellant in reneging from the Settlement Agreement cannot be said to be an abuse of the process of law as she has not gained any thing by not complying with the terms thereof, and instead, it is the respondent who received Rs. 10 lakhs from the appellant towards Society charges but failed to transfer the flat in favour of the appellant.

33. She also made allegations against her own earlier counsel on record as also the learned counsel for the respondent, submitting that they had connived into misleading her to enter into the Settlement Agreement.

34. She submits that the present appeal be therefore allowed, and the Impugned Order be set aside.

SUBMISSIONS ON BEHALF OF THE RESPONDENT



2025:DHC:5080-DB



35. In answer to the submissions of the appellant, the learned counsel for the respondent, Mr. Prabhjit Jauhar, submitted that owing to the matrimonial discord, the respondent was compelled to leave his own flat, i.e., the Subject Property in Mumbai on 06.04.2017, and shift to his parental home in Faridabad, Haryana. Since then, the appellant has been residing in the Subject Property along with her parents.

36. The learned counsel submitted that under the comprehensive Settlement Agreement dated 01.09.2022, the appellant had agreed to accept the transfer of the Subject Property in full and final settlement of all her claims including permanent and *interim* maintenance, alimony, *stridhan*, gifts, and any other monetary or proprietary claims. The said Settlement Agreement was recorded before the learned Family Court and affirmed by way of an Affidavit of Undertaking dated 03.09.2022. Thereafter, on 14.09.2022, the learned Family Court recorded the joint statement of both parties under the First Motion of Mutual Consent Divorce proceedings and accepted the same, and allowed the first motion.

37. The learned counsel urged that the Clauses 2, 17, and 25 of the Settlement Agreement clearly stipulated that upon transfer of the Subject Property by way of a Gift Deed, the appellant shall have no further claim against the respondent, his parents, or relatives. Furthermore, under Clauses 19 and 20 of the said Settlement Agreement, the appellant undertook to pay Rs. 9,91,408/- to close the outstanding home loan and a further Rs. 13,48,758/- towards pending society maintenance charges. He submitted that while she complied



2025:DHC:5080-DB



with Clause 19, she failed to honour Clause 20, later attempting to shift this burden upon the respondent.

38. It is further contended that as per Clause 27 of the Settlement Agreement, both parties were obligated to withdraw all pending litigation within 10 days of finalisation of the Gift Deed. However, through her email dated 02.11.2022, the appellant unilaterally proposed that such withdrawal be deferred until the decree of divorce was passed under the Second Motion, contrary to agreed terms, and she reiterated this position in subsequent emails including that on 03.11.2022.

39. Mr. Jauhar submitted that despite appellant's counsel confirming on 03.11.2022 that the draft Gift Deed sent by the respondent on 07.10.2022 was acceptable and final, the appellant continued to impose conditions extraneous to the Settlement Agreement. Her attempt to wriggle out of the Settlement Agreement and the Affidavit of Undertaking is manifest in her email communications and conduct thereafter.

40. Aggrieved by the appellant's wilful breach of her undertakings, the respondent filed the Contempt Petition bearing No. CONT.CAS(C) 1342/2022, and the appellant responded by attempting to revive her application for maintenance under Section 24 of the HMA, as also resumed prosecution of pending matters in various courts including the Sessions Court and the Mahila Court in Mumbai, despite being bound by an undertaking to not do so.



2025:DHC:5080-DB



41. He submitted that the appellant's reply to the contempt petition was filed on 05.04.2023 and in paragraph 11 of the preliminary submissions, she unequivocally stated that she was withdrawing her consent to the Second Motion divorce petition and thereby sought to render the Settlement Agreement dated 01.09.2022 redundant. This position, along with her revived legal proceedings, constitutes a clear breach of her solemn undertakings.

42. The learned counsel submitted that even before the learned Single Judge, the appellant admitted that she does not wish to resume conjugal life with the respondent. The respondent, despite the appellant's defaults, agreed to deposit Rs. 13,48,758/- in Court and pay the additional amount of Rs. 1,13,170/- to the society on the condition that the appellant pays her agreed share directly to the society. Even this offer was declined by the appellant.

43. He submitted that the learned Single Judge noted that the appellant was not inclined to proceed with the transfer of the property and divorce, and had wilfully reneged the Settlement Agreement and Affidavit of Undertaking. It is submitted that the learned Single Judge rightly held that, while no party can be compelled to file a Second Motion divorce petition, the remaining terms of the Settlement Agreement, particularly Clauses 20, 21 and 27 remain binding and independently enforceable.

44. In the present case, the learned counsel urged that there is a sworn Affidavit of Undertaking dated 03.09.2022 filed by the



2025:DHC:5080-DB



appellant before the learned Family Court. Her conduct in reneging from the same and continuing with litigation, after agreeing to a full and final settlement, constitutes a gross abuse of legal process.

45. The learned counsel placed reliance on the decisions of the Supreme Court in **Balwantbhai Somabhai Bhandari v. Hiralal Somabhai Contractor**, (2023) SCC OnLine SC 1139, and **Rama Narang v. Ramesh Narang**, (2006) 11 SCC 114, and the decision of this Court in **Rajat Gupta** (supra), to contend that violation of a settlement forming part of a Court Order or Decree attracts contempt jurisdiction. The present case, he contended, stands on an even firmer footing due to the existence of a separate Affidavit of Undertaking given to the learned Family Court.

46. As far as the order dated 19.11.2024 passed by the High Court of Bombay, he submits that the operation of the same has been stayed by the Supreme Court, *vide* its order dated 09.12.2024 passed in SLP (Crl.) 16740/2024 and therefore, no reliance can be placed on the same.

47. To conclude, the learned counsel submitted that the learned Single Judge, in paragraph 16 of the Impugned Order, rightly observed that if undertakings given to Courts are breached with impunity, the faith of the public in the judicial system would be seriously undermined. He emphasised that the appellant has, despite several opportunities granted by the learned Single Judge, failed to



purge her contempt, and had left the Court with no option but to enforce the solemnity of Undertakings by awarding a sentence.

48. The learned counsel, in support of his contentions, drew sustenance from the following Judgments:

- *Anveesh Sood v. Tithi Sood*, (2012) SCC OnLine Del 2445
- *D.K.C v. K.C. & Ors.*, (2016) SCC OnLine Del 185

Analysis and conclusion

49. The present appeal raises questions of considerable significance concerning the intersection of matrimonial law and the coercive jurisdiction of courts under the Contempt of Courts Act. It arises from the alleged wilful breach by the appellant of a comprehensive Settlement Agreement dated 01.09.2022 and an Affidavit-cum-Undertaking dated 03.09.2022, both filed before the learned Family Court, Saket, New Delhi along with petition seeking divorce by mutual consent.

50. The learned Single Judge, by the Impugned Order dated 09.08.2023, held the appellant guilty of civil contempt under Section 2(b) of the Act for having disobeyed the undertakings and defaulted on her obligations under the Settlement Agreement. The appellant disputes this finding, asserting that her conduct does not satisfy the legal threshold of "wilful disobedience", and that her inability to perform was the result of *bona fide* concerns and prevailing circumstances, not contumacious intent.



2025:DHC:5080-DB



51. Before this Court, the principle submission of the appellant is that her withdrawal of consent for the second motion under Section 13B(2) is not ‘wilful’ and is attributable to the respondent and other circumstances beyond her control. As per the appellant, this genuine inability to comply with the terms of settlement render the Settlement Agreement and the undertakings flowing from it as unenforceable. The appellant claimed that since the second motion was never signed, the entire Settlement Agreement stands frustrated and cannot form the basis of contempt. More so, she is within her legal entitlement to renege from the Settlement Agreement and decline to go ahead with the second motion for divorce by mutual consent. The appellant further brought to the notice of this Court, the decision of Bombay High Court in WP (Crl.) No. 2638/2022 dated 19.11.2024 filed by the respondent whereby the Bombay High Court accepted the appellant’s plea that she was well within her right to renege the second motion for divorce. She submitted that the Bombay High Court has observed that the respondent had accepted Rs. 10 lacs from the appellant but failed to execute the Gift Deed.

52. At this stage, it is pertinent to mention that the respondent has filed an SLP (Crl.) No. 16740/2024 assailing the judgment of the Division Bench of the Bombay High Court passed in aforementioned Writ Petition and the Supreme Court *vide* Order dated 09.12.2024 has stayed the operation of the judgment.

53. In the above context, it is relevant to note Section 2(b) of the Act defines “civil contempt” to mean:



“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.”

54. The legislative intent behind invoking contempt jurisdiction is to uphold the majesty of the Court and ensure compliance with its orders. However, it is equally settled that such power is to be exercised with circumspection and only when non-compliance is demonstrably wilful, deliberate and without justification. As held by the Supreme Court in **Ashok Paper** (supra), wilfulness requires a conscious, voluntary breach, done with a bad motive or purpose. Moreover, the act complained of must not be dependent on the conduct of a third party, nor should it require extraordinary effort for compliance. The relevant extracts thereof read as under:

“17. Section 2(b) of the Contempt of Courts Act defines “civil contempt” and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. “Wilful” means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for



2025:DHC:5080-DB



its compliance. This has to be judged having regard to the facts and circumstances of each case. ...”

55. Applying the above principles to the facts of the present case, it is evident that the appellant had, in partial performance of her obligations under the Settlement Agreement, paid a substantial sum of ₹9,91,408.41/- on 14.09.2022 towards closure of the home loan on the Subject Property. The payment was made at the time of recording of the parties' statements in the First Motion petition under Section 13B(1) of the HMA. The loan was duly closed by HSBC Bank, and the bank issued the discharge and closure certificates, which were promptly shared with the appellant.

56. The concept of 'Wilful Disobedience' under Section 2(b) of the Act, involves more than mere non-compliance. It requires a deliberate, intentional act, done with the objective of undermining or disregarding the authority of the court. It is settled law that an inadvertent, partial, or constrained inability to comply, particularly when accompanied by mitigating factors or *bona fide* efforts, cannot be equated with 'Wilful Disobedience'.

57. In the present case, the payment of ₹ 9,91,408.41 towards closure of the outstanding loan on the subject Property on 14.09.2022 was a crucial step under the Settlement Agreement and was done even before any default was alleged. The appellant derived no unilateral benefit from this payment and on the contrary, the benefit accrued to



2025:DHC:5080-DB



the respondent, who was exonerated from the liability on the mortgage.

58. The controversy in the present case pertains primarily to the appellant's alleged refusal of the appellant to pay ₹13,48,758/- in respect of society maintenance dues, and now to participate in the filing of the Second Motion for seeking divorce by mutual consent.

59. Under Clauses 20 and 21 of the Settlement Agreement, the said maintenance dues are to be paid by the appellant before the execution of the Gift Deed. However, the Kalpataru Habitat Society, by its communication dated 04.11.2022, categorically refused to part with the required NOC and documents unless the entire dues were first cleared. This placed the appellant in a dilemma wherein she was to pay a large sum upfront without being in possession of the documentation necessary to secure her title under the Gift Deed.

60. Further, the significance of this payment lies not merely in its quantum, but its intent. The appellant, who was admittedly unemployed and residing with her ailing parents, nonetheless mobilised considerable resources and made a time-bound financial contribution in furtherance of the settlement. This act militates against any presumption of bad faith or disregard of the undertaking. It reflects at the very least a sincere, if partial, effort to comply with the Settlement Agreement.

61. In this factual context, the appellant proposed that the respondent to pay the entire dues to the Society in the first instance



2025:DHC:5080-DB



and she would reimburse her share at the time of registration of the Gift Deed. Her email correspondence between 02.11.2022 and 17.11.2022, which forms part of the record, does not reflect a categorical refusal to comply but reveals repeated efforts to negotiate a safe and reciprocal mechanism for performance. While this may have deviated from the original sequence contemplated in the settlement, it does not amount to repudiation or wilful breach.

62. The record further reflects that over 50 emails were exchanged between the parties between mid-September and mid-November 2022. The breakdown, if any, occurred only toward the end of the correspondence. Such protracted communication negates the allegation of outright default and indicates a continuing willingness to perform the settlement agreement *albeit* with growing mistrust and logistical disagreements between the parties.

63. The learned counsel on behalf of the respondent also contended that the appellant had reneged the Settlement Agreement by proposing that the entire litigation shall be withdrawn post transfer of property and signing the second motion divorce, which is contrary to the Settlement Agreement wherein the parties had undertaken that all the cases except the quashing petition of FIR shall be filed after passing of the decree for divorce by way of mutual consent. The appellant in her email dated 02.11.2022 had explained the reasons for proposing such a change, as, according to her, there were numerous instances of lack of transparency and trust, which repeatedly grew among the parties, therefore, the appellant had a serious apprehension about the



withdrawal of cases and signing of second motion of divorce. Though this may amount to renegotiating the terms of the Settlement Agreement, for the purposes of exercising contempt jurisdiction, in the peculiar facts of the present case, especially keeping in view that the case arises out of a matrimonial dispute, we may note that the same does not amount to reneging on the Settlement Agreement, but to make certain changes in the Settlement Agreement owing to the changed circumstances.

64. This Court also takes note of the emergent personal circumstances that confronted the appellant in early 2023. Her father was diagnosed with cancer and underwent emergency surgery, and her mother, suffering from paralysis and multiple co-morbidities, required constant care. These events, coupled with her existing financial distress, further impaired her ability to comply with the onerous terms of the settlement within the agreed timeline.

65. Coming now to the issue of divorce by mutual consent under Section 13B(2) of the HMA, the learned Single Judge appears to have failed to give due consideration to the binding nature of judicial precedent on this issue. As held in *Sureshta Devi* (supra), the requirement of “mutual consent” must persist till the date of decree. Either party has an unfettered right to withdraw consent prior to that stage. The following are the observations made therein:

“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]].

66. In **Rajat Gupta** (supra), this Court emphasised the same principle and held that the learned Family Court cannot proceed with the second motion if mutual consent no longer exists. This view was again reaffirmed in **Vineeta Daulet Singh** (supra).

67. Thus, to the extent that the finding of contempt is premised on the appellant's failure to appear for the Second Motion proceedings or her alleged refusal to proceed with mutual consent divorce, such finding is unsustainable in law. The appellant exercised a right that is recognised by statute and fortified by precedent.

68. Contempt jurisdiction is not meant to serve as a substitute for execution or enforcement proceedings. Where performance is



dependent on multiple factors, including the compliance from a housing society, financial institutions, and mutual sequencing, mere non-compliance does not *ipso facto* constitute contempt. The Court must, as per **Ram Kishan** (supra) distinguish between “wilful disobedience” and mere non-performance arising from *bona fide* constraints. The relevant extracts read as under:

“11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities. (Vide V.G. Nigam v. Kedar Nath Gupta [V.G. Nigam v. Kedar Nath Gupta, (1992) 4 SCC 697 : 1993 SCC (L&S) 202 : (1993) 23 ATC 400] , Chhotu Ram v. Urvashi Gulati [Chhotu Ram v. Urvashi Gulati, (2001) 7 SCC 530 : 2001 SCC (L&S) 1196] , Anil Ratan Sarkar v. Hiral Ghosh [Anil Ratan Sarkar v. Hiral Ghosh, (2002) 4 SCC 21] , Bank of Baroda v. Sadruddin Hasan



Daya [Bank of Baroda v. Sadruddin Hasan Daya, (2004) 1 SCC 360] , Sahdeo v. State of U.P. [Sahdeo v. State of U.P., (2010) 3 SCC 705 : (2010) 2 SCC (Cri) 451] and National Fertilizers Ltd. v. TuncayAlankus [National Fertilizers Ltd. v. TuncayAlankus, (2013) 9 SCC 600 : (2013) 4 SCC (Civ) 481 : (2014) 1 SCC (Cri) 172] .)

12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, 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 contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of



default or misconduct.” (Vide S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao [Rakapalli Raja Ram Gopala Rao v. Naragani Govinda Sehararao, (1989) 4 SCC 255 : AIR 1989 SC 2185] , Niaz Mohammad v. State of Haryana [Niaz Mohammad v. State of Haryana, (1994) 6 SCC 332 : AIR 1995 SC 308] , Chordia Automobiles v. S. Moosa [Chordia Automobiles v. S. Moosa, (2000) 3 SCC 282] , Ashok Paper Kamgar Union v. Dharam Godha [Ashok Paper Kamgar Union v. Dharam Godha, (2003) 11 SCC 1] , State of Orissa v. Mohd. Illiyas [State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275 : 2006 SCC (L&S) 122 : AIR 2006 SC 258] and Uniworth Textiles Ltd. v. CCE [Uniworth Textiles Ltd. v. CCE, (2013) 9 SCC 753] .)

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15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. [See Sushila Raje Holkar v. Anil Kak [Sushila Raje Holkar v. Anil Kak, (2008) 14 SCC 392 : (2009) 2 SCC (L&S) 497] and Three Cheers Entertainment (P) Ltd. v. CESC Ltd. [Three Cheers Entertainment (P) Ltd. v. CESC Ltd., (2008) 16 SCC 592 : AIR 2009 SC 735]]”



69. The learned Single Judge's reliance on **Avneesh Sood** (supra) is misplaced. In that case, the wife received significant sums under the settlement and then resiled. In contrast, the appellant herein did not receive any material benefit and in fact incurred expenses for getting the subject Property encumbrances free. Therefore, there the appellant has not been put in an advantageous position. The same reads as under:

“39. The issue which arises for my consideration is whether the conduct of the respondent in resiling from her undertaking given to the Court, by which she was bound, tantamounts to contempt of Court. “Civil Contempt” is defined to mean willful disobedience of any judgment, decree, direction, order, writ or other process of the Court or wilful breach of an undertaking given to a Court. The respondent has sought to confuse the issue by asserting that she has a right not to give her consent to proceed further under Section 13-B(2) of the Hindu Marriage Act after the “cooling off” period of 6 months has expired. No doubt, the respondent cannot be compelled to give her consent for moving the second motion petition under Section 13-B(2), and she has the right to withhold such consent. But does that mean that a party who has given an undertaking to the Court that he/she shall grant his/her consent for moving the second motion petition, as a part of a settlement wherein he/she has derived benefits and advantage, can simply walk out of the said agreement and undertaking given to the Court without the consequences flowing from the Contempt of Courts Act? In my view the answer to this question would normally be “No”, though there may be exceptional circumstances in which a party may be justified in not granting his/her consent to



move the second motion petition despite the undertaking given to the Court on account of extraordinary developments which may take place after the giving of the undertaking to the Court, and before the time for giving the consent for the second time under Section 13-B(2) arrives.

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47. No doubt the law gives the right to both the parties to take a decision whether, or not, to continue with the mutual consent divorce proceedings, and for that purpose a cooling off period of at least 6 months is provided under the scheme of the Act. It does not mean that an undertaking given by them to the Court to continue their consent even for moving the second motion petition can be said to be an illegal consent or undertaking or an undertaking recorded by the Court without jurisdiction. She, while giving her undertaking, did not undertake to commit an illegality, or to do anything which is barred by law. No one compelled the respondent to give the said undertaking. She could have kept her options open whether, or not, to give her consent for moving the second motion petition at the end of the cooling off period of six months. But she did consciously decide to give the said undertaking to the Court. This she did to derive benefit under the agreement with the petitioner.

48. It was on account of the respondent's conduct of voluntarily giving her undertaking to the Court to abide by her settlement, and the acceptance thereof by the Court, which led the petitioner to agree to pay an amount of Rs. 7 crores in all to the respondent, and to part with a huge amount of Rs. 1.5 cores at the first motion stage. The respondent cannot make mockery of the law and mock at the Courts by now claiming that she has decided not to give her consent for moving the second motion petition, and that



too for the reasons that she wants to renegotiate the terms of settlement, both in relation to her monetary compensation and custody/visitation rights in respect of the minor child. It is clear that the respondent has exploited and abused the process of the Court to serve her purpose, without intending to adhere to her solemn undertaking given to the Court.”

(Emphasis supplied)

70. The learned Single Judge’s reliance on **D.K.C.** (supra) is also misplaced to the extent that the said decision was passed in the context of a father’s wilful and premeditated violation of a consensual parenting plan for his minor daughter.

71. The learned Single Judge also failed to appreciate the binding nature of the judgment in **Sureshta Devi** (supra), reaffirmed in **Rajat Gupta** (supra). These authorities hold that consent for mutual divorce under Section 13B(2) HMA must be ongoing and can be withdrawn at any time before the decree is passed. Clause 42 of the Settlement Agreement cannot override this statutory right.

72. Viewing the matter holistically, the appellant’s conduct, though not in strict conformity with the terms of the Settlement Agreement, does not amount to contempt. She has demonstrated part-compliance, articulated her concerns in real time through extensive correspondence, and offered plausible explanations for her subsequent inability. Her actions fall short of the wilful and deliberate disobedience that Section 2(b) of the Act demands.



73. The reliance placed by the respondent on decisions such as *Balwantbhai Somabhai* (supra) and *Rama Narang* (supra), is misplaced. Those cases involved unambiguous violations of commercial undertakings or express court orders. In contrast, the present case involves a party who has partly complied, remained engaged in negotiations, and whose failure arose from evolving circumstances, both personal and transactional.

74. We are particularly guided by the facts of the present case that forcing the appellant to perform other terms of the Settlement Agreement on peril of contempt, would be to indirectly force her to also participate in the Second Motion for Divorce by mutual consent, which the law forbears us to do. We cannot indirectly compel the appellant to do something which we cannot directly compel her to do.

75. We are also mindful of the fact that though the Settlement Agreement and the Affidavit of Undertaking of the parties, is couched as undertaking to the Court, they remain the terms of the Settlement Agreement, an agreement between the parties, and may not be elevated to the level of an undertaking to the Court.

76. At the end we would however, strongly deprecate the conduct of the appellant in making unsubstantiated allegations against her own erstwhile counsel on record as also the learned counsel for the respondent. These allegations surfaced only during the course of hearing of this appeal and seemed to be only motivated to wriggle out



2025:DHC:5080-DB



of the Settlement Agreement. We find absolutely no material to substantiate the same and therefore, outrightly reject them.

77. In light of the foregoing discussion, we are of the considered view that the learned Single Judge erred in recording a finding of guilt under the Contempt of Courts Act against the appellant. The appellant's conduct does not warrant penal consequence.

78. The appeal is, accordingly, allowed. The Impugned Order dated 09.08.2023 is set aside. The appellant is held not guilty of civil contempt. All pending applications stand disposed of with the above observations and findings.

SHALINDER KAUR, J

NAVIN CHAWLA, J

JULY 01. 2025/FRK

Click here to check corrigendum, if any