

Neutral Citation No. - 2024:AHC-LKO:64080-DB

Chief Justice's Court

Case :- SPECIAL APPEAL DEFECTIVE No. - 503 of 2024

Appellant :- Rinki Kumari

Respondent :- State Of U.P. Thru. Prin. Secy. (P.W.D.) Lko. And 3 Others

Counsel for Appellant :- Mr. Ram Prasad Verma, Nidhi Singh

Counsel for Respondent :- C.S.C., Ms. Megha Pandey, Mr. V. P. Nag,
Standing Counsel.

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Jaspreet Singh, J.

1. Heard Shri Ram Prasad Verma, learned counsel for the appellant, Ms. Megha Pandey learned counsel for the private respondent no.4 and Shri V. P. Nag, learned counsel for the State-respondents.

2. The instant special appeal preferred under Chapter VIII Rule 5 of the High Court Rules, 1952 is accompanied by an application seeking condonation of delay. The cause for delay of six days in filing the appeal has been explained in the affidavit and the same is not seriously contested by the respondents and the Court finds that cause shown is sufficient. Accordingly, the delay is condoned and the application bearing I.A. No.1 of 2024 shall stand allowed.

On merits

3. Under challenge is the judgment and order dated 05.08.2024 passed by the learned Single Judge in a batch of two writ petitions bearing Writ-A No.307 of 2023 filed by the private respondent no.4 and the other bearing Writ-A No.6248 of 2023 filed by the present appellant and both the petitions have been decided by a common

judgment as a consequence the writ petition filed by the private respondent no.4 was allowed and the writ petition of the present appellant was dismissed.

4. The dispute in between the parties at present has arisen on the death of Chandra Prakash who was working as a Personal Assistant in the Public Works Department in Lakhimpur Kheri. The private respondent no.4 Satya Prakash is the younger brother of the deceased Chandra Prakash while the present appellant is the estranged wife of Chandra Prakash. Upon the death of Chandra Prakash on 27.08.2022, both the appellant and the private respondent no.4 had moved an application with the Public Works Department seeking compassionate appointment under the U.P. Recruitment of Dependents of Government Servant Dying In Harness Rules, 1974 (hereinafter referred to as the Dying in Harness Rules, 1974)

5. Learned Single Judge by means of the order impugned in the instant appeal while allowing the writ petition preferred by the private respondent no.4 has directed the department to pass an appropriate order providing a suitable appointment under the Dying in Harness Rules 1974 to the private respondent no.4 treating him to be more suitable in contrast to the appellant. This has been challenged by the appellant who seeks her appointment on compassionate grounds in place of deceased Chandra Prakash.

6. The submission of the learned counsel for the appellant is that

the relations between the appellant and Chandra Prakash may not have been cordial and even though matrimonial disputes were engaging the attention of the court and Chandra Prakash and his family members were contesting the litigation but the fact remains that no decree for divorce was granted, hence she continued to remain the wife of Chandra Prakash and on his death, she was entitled to get an appointment under the Dying-in-Harness Rules, 1974.

7. It is urged that this aspect of the matter has not been considered by the learned Single Judge and by dismissing the writ petition of the appellant and by allowing the writ petition of the private respondent no.4 the learned Single Judge has committed an error.

8. It is further urged that a settlement agreement was arrived at between the appellant and her husband Chandra Prakash before the Mediation & Conciliation Centre of Allahabad High Court but the condition of the settlement were not fulfilled, hence it cannot be said that the settlement could be made binding on the appellant and this aspect of the matter has also not been appropriately considered by the learned Single Judge while passing the impugned order.

9. It thus urged that the decision of the learned Single Judge deserves to be set aside and the writ petition of the appellant deserves to be allowed whereas the petition preferred by the private respondent deserves to be dismissed.

10. Ms. Megha Pandey refuting the aforesaid submissions has

urged that Chandra Prakash and the appellant were not having a good matrimonial life. The appellant had started living separately with her parents and she had so much of bitterness that she had lodged criminal proceeding against her husband and his family members.

11. It is further submitted that Chandra Prakash had assailed the criminal proceeding by filing Criminal Misc. Writ Petition No.16472 of 2020 before a Division Bench of this Court wherein vide order dated 06.01.2021 the matter was referred to the Mediation & Conciliation Centre of this Court at Allahabad.

12. The parties entered into a settlement agreement which was duly signed by the parties and the mediators on 04.05.2022. In terms of the said settlement, Chandra Prakash and the appellant had decided to take divorce by mutual consent and in furtherance thereof had also filed a petition before the competent Principal Judge, Family Court at Allahabad bearing Case No.767 of 2022. It was also settled that Chandra Prakash would pay a total sum of Rs.3,60,000/- in two installments to the appellant which was to be treated as one time permanent alimony including the Stridhan and further it was agreed that after the aforesaid sum was received by the appellant, she would have no claim against her husband.

13. It is also submitted that the amount as agreed was paid to the appellant and thus for all practical purposes the settlement agreement dated 04.05.2022 was duly acted upon by the parties. The only

formality that was left was the passing of the formal divorce decree but unfortunately prior thereto Chandra Prakash met his maker. It in this context that the Additional Principal Judge, Family Court No.5 at Allahabad abated the proceedings but nevertheless the appellant had received the settlement amount of Rs.3,60,000/- and as agreed she also moved appropriate applications before the court to withdraw all her criminal cases against Chandra Prakash and his family members.

14. In this view of the matter where the appellant had already severed her ties with Chandra Prakash and his family members, hence upon his death, she could not claim right of compassionate appointment and this aspect has been duly noted by the learned Single Judge and thereafter taking a holistic view has passed the impugned order as a consequence the writ petition of the appellant was dismissed and the petition filed by the private respondent no.4 was allowed and for the aforesaid reasons, the instant appeal has no merit and deserves to be dismissed.

15. The Court has heard the learned counsel for the parties and also perused the material on record.

16. Learned counsel for the appellant could not dispute the fact that the appellant and her husband Chandra Prakash did not enjoy a cordial matrimonial life. It also could not be disputed that the appellant had lodged a criminal proceedings against her husband and his family members and in furtherance thereto by means of order dated

05.01.2021 passed by a Co-ordinate Bench of this Court in Criminal Miscellaneous Writ Petition No.16472 of 2020, the matter was referred to the Mediation & Conciliation Centre of this Court wherein a settlement agreement dated 04.05.2022 was arrived at. It also could not be disputed that the appellant has been staying separately from her husband and with her parents on account of matrimonial discord.

17. Learned counsel for the appellant also could not dispute that in terms of settlement agreement dated 04.05.2022 the condition regarding payment of one time permanent alimony of Rs.3,60,000/- has been received by the appellant and the petition for divorce under Section 13-B of the Hindu Marriage Act had also been filed before the competent Additional Principal Judge, Family Court No.5 at Allahabad but before the grant of decree for divorce Chandra Prakash expired and the family court proceedings were abated.

18. In light of the aforesaid undisputed facts, the submission of the learned counsel for the appellant that the settlement agreement has not been acted upon as the second installment of Rs.1,80,000/- was to be paid by Chandra Prakash before the family court at the time of grant of decree was not satisfied, hence the settlement agreement cannot be made binding on the appellant is patently misconceived.

19. From the perusal of the settlement agreement which has been brought on record as annexure no.2, it would reveal that the parties thereto i.e. appellant and Chandra Prakash had agreed that the

appellant would be entitled to a total sum of Rs.3,60,000/- payable in two installments. It is not disputed that the entire amount of Rs.3,60,000/- has been received by the appellant. Merely to say that the second installment was to be paid before the family court and since it was paid before the court where the criminal proceedings are pending, hence it was not in compliance of the settlement agreement is completely preposterous. This court finds that as far as the payment of permanent one time alimony is concerned, the same as admitted to the appellant has been paid to her and mere deviation regarding payment before a different court, than what was agreed in the settlement is not going to alter the impact or the consequence of the settlement agreement.

20. The learned counsel for the appellant could not dispute that the appellant had moved applications before respective courts indicating that the parties have already agreed to dissolve their marriage and since the settlement agreement had been arrived at and its conditions were fulfilled, hence she withdrew her cases. This fact also signifies that agreement was duly acted upon and the appellant did not raise any objection that the settlement agreement remained unfulfilled.

21. Learned Single Judge has noticed the fact that the private respondent no.4 being the younger brother of the deceased who had the burden of taking care of the family of the deceased is more suitable for grant of compassionate appointment cannot be faulted in

the peculiar facts and circumstances of this case. Learned Single Judge taking note of the facts and the circumstances in paragraph-23 of the judgment dated 05.08.2024 has held as under:-

"23. In view of the aforesaid facts and circumstances, it is clear that the relation of Smt. Rinki was not cordial with her husband Late Chandra Prakash (since deceased) from the very beginning and she lodged the FIR against him and his entire family having lived separately and pursuant to the orders being passed by this Court, she participated in the mediation proceedings and pursuant to settlement agreement entered into between the parties, she received a sum of Rs. 3,60,000/- as agreed by the parties and, thereafter filed an affidavit before this court saying that she does not want to pursue the criminal proceedings against the family members of her husband and in such affidavit, even she has not indicated herself as wife of the late employee, rather has stated the name of her father giving the address of her father as place of her living, therefore, she may not be provided a suitable appointment under Dying in Harness Rules, 1974 for the reason that she would not be able to look after the family members of her late husband. To the contrary, the younger brother of late employee namely, Satya Prakash (supra) is bachelor and unemployed graduate and has been living with the family of the late employee and looking after them by his meagre means, therefore, he would be the appropriate person to whom any suitable appointment may be offered under Dying in Harness Rules, 1974."

22. The aforesaid reasoning of the learned Single Judge in the peculiar facts and circumstances of the case cannot be faulted, hence this Court is of the firm opinion that the order passed by the learned Single Judge dated 05.08.2024 does not suffer from any error which may persuade this Court to intervene.

23. For the aforesaid reasons, the appeal is found to be without merit and is accordingly dismissed. The judgment passed by the learned Single Judge is affirmed. Costs are made easy.

(Jaspreet Singh, J.) (Arun Bhansali, C.J.)

Order Date :- 17.9.2024

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