

ITEM NO.11

COURT NO.11

SECTION IVA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil)...../2010
CC 12198/2010

(From the judgement and order dated 23/07/2008 in RP No. 120/2009 &
FA No. 412/2008 of The HIGH COURT OF M.P AT INDORE)

DEEPAK THAKKAR

Petitioner(s)

VERSUS

RASHMI THAKKAR

Respondent(s)

IA 1 (C/delay in filing SLP and office report)

Date: 26/08/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s)

Mr. Sushil Kr. Jain, Adv.
For Ms. Pratibha Jain,A.O.R.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

This petition is directed against orders dated 23.7.2008 and 30.3.2010 passed by the Division Bench of the Madhya Pradesh High Court in F.A. No. 412/2008 and R.P. No. 120/2009 respectively. The petitioner has also filed an application for condonation of 626 days' delay in filing the special leave petition against order dated 23.7.2008.

The parties were married on 9.11.1989. The petitioner filed petition under Section 13(1) of the

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Hindu Marriage Act, 1955 (for short, 'the Act') for grant of divorce.

During the pendency of the divorce petition, the respondent filed an application under Section 24 of the Act. By an order dated 15.4.2008, Additional Principal Judge, Family Court, Indore, directed the petitioner to pay interim maintenance of Rs.25,000/- per month and litigation cost of Rs.10,000/-. Thereafter, the petitioner filed application for withdrawal of the divorce petition, but his prayer was rejected by the Family Court, Indore.

The petitioner challenged the order of the Family Court in F.A. No. 412/2008, which was disposed of in terms of the agreement arrived at between the parties. The relevant portions of that order are extracted below:

"In course of hearing of this appeal in

presence of the parties it was agreed as follows:

- (a) The husband Dipak Thakkar shall stay in the house of his brother, namely, Kirti Thakkar atleast for three days in a week and rest of the days he may spend in tour job or otherwise.
- (b) He will deposit a sum of Rs.30,000/- by 02.08.08 with Ravindra Thakkar to Gujarati Samaj Innovative College of Science and Commerce where Kwiti is studying in First Year in B.Sc. Bio-Tech and to the school Gujarai Samaj Scheme No. 54 wherein Jaynesh is prosecuting his studies in class eight and deposit the annual fees.

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(c) The receipt of payment of fees shall be handed over to Rashmi Thakkar.

(d) Dipak Thakkar shall pay a sum of Rs.5,000/- to Rashmi Thakkar commencing 28.08.08 for house hold expenses.

(e) Ravindra Thakkar the brother who is present has agreed to pay a sum of Rs.2,000/- to Kwiti Thakkar for a period of six months.

(f) After expiry of six months Dipak Thakkar shall pay a sum of Rs.7,500/- to Rashmi Thakkar for house hold expenses.

(g) Dipak Thakkar shall not file any application for divorce and as he has deep love for his two children Rashmi Thakkar has undertaken that she will not file any application against husband.

(h) Dipak Thakkar shall spend money for the education and marriage of his children.

(I) Dipak Thakkar shall not sell the hosue where his wife and children are staying.

(j) Dipak Thakkar shall see to it that Rashmi Thakkar and children stay happily,

(k) Ravindra Thakkar has undertaken that he will visit Kwiti and Jaynesh and his sister-in-law once in a week.

(ci)(l) If there is no electricity

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connection or water connection in the house both Dipak Thakkar and Ravindra Thakkar shall see to it that both the connections are revived within 24 hours. Recording such concession the appeal stands disposed. The order of the learned trial Judge, needless to emphasize, is modified accordingly. There shall be no order as to costs."

After lapse of considerable time, the petitioner filed

R.P. No.120/2009 for review of order dated 23.7.2008 by contending that he is not in a position to fulfill the conditions incorporated in that order and at the time of passing of the order he was not able to understand the consequences thereof. The Division Bench of the High Court dismissed the review petition by recording the following observations:

"Having heard learned counsel for the parties and on perusal of the record, it is clear that the impugned order was the consenting order passed by learned Division Bench after hearing both the parties as well as their counsel in camera, therefore, we do not find any ground to recall/review the impugned order dated 23.7.2008 passed in F.A. No. 412/2008. Therefore, the review petition is hereby dismissed."

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Shri Sushil Jain, learned counsel for the petitioner submitted that even though the special leave petition has been filed with delay of 626 days qua order dated 23.7.2008, the same may be condoned because the petitioner was pursuing the remedy of review.

In the context of the submission made by the learned counsel, we called upon him to disclose the date on which the review petition was filed, but the learned counsel could not give any reply.

assigned to the review petition shows that the same was filed after lapse of considerable time. The explanation given by the petitioner for condonation of 626 days' delay cannot be treated as satisfactory.

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Therefore,

Even on merits, we are convinced that the petitioner has not been able to make out a case for upsetting the order passed on the basis of an agreement reached between the parties. The statement made by the petitioner in the review petition that at the time of passing of order dated 23.7.2008 he was not able to understand the consequences of the conditions sans credibility and the High Court rightly refused to act upon the same.

The special leave petition is accordingly dismissed on the ground of delay and also on merits.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master