Ravi Singhal and Others Vs. Manali Singhal and Another

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SooperKanoon Citation : sooperkanoon.com/701390

Court : Delhi

Decided On : Jul-28-2000

Reported in : II(2000)DMC732

Judge : Devinder Gupta and; K.S. Gupta, JJ.

Acts : Code of Civil Procedure (CPC), 1908 - Order 7, Rule 11; Hindu Adoptions and Maintenance Act, 1956; Specific Relief Act, 1963

Appeal No. : FAO (OS). No. 9/99

Appellant : Ravi Singhal and Others

Respondent : Manali Singhal and Another

Advocate for Def. : Ms. Pinki Anand, Adv.

Advocate for Pet/Ap. : Mr. Kapil Sibbal, Senior Advocate,; Mr. Kirti Uppal and; Mr

Judgement :
ORDER

Devinder Gupta, J.

1. The defendants/appellants have preferred this appeal against the order passed on 20.10.1998 by learned Single Judge of this Court disposing of three applications (A.1126/97, IA.2364 and IA.2635 of 1998) in pending suit (S.No. 2358

of 1997).

2. Appellant No. 1 is the son of appellants No.2 and 3, who respectively are the father and the mother of appellant No.1. Respondent No.1 is the wife of appellant No.1. Respondent No.2 is his daughter. On 28.10.1997 the plaintiff/respondents filed a suit against the defendants/appellants claiming the following reliefs:-

'(a) a decree against the defendant for payment of Rs.9,60,000 on account of arrears of maintenance, vacation expenses and school fees along with interest @ 22% per annum from due dates till payment.

(b) a decree in favor of the plaintiffs and against the defendants jointly and severally directing the defendants to specifically perform the said Agreement dated 4.11.1994 marked Annexure- A annexed hereto together with interest @ 22% p.a.

(c) a decree for rendition of accounts against the defendants in respect of the shares, securities, deposits, dividends and income of the plaintiff in partnership companies, HUFs which the defendants are managing and/or controlling and other companies and partnerships including those detailed in Schedule-II.

(d) a decree in favor of the plaintiffs and against the defendants jointly and severally directing the defendants to disclose the details of the properties of the plaintiffs including their shares, securities, deposits and also dividends and income accrued there from and render to the plaintiffs true and faithful account of the same and disclose the names of HUFs in which the defendants and/or their families are a part of any larger HUF of which they are coparceners.

(e) a decree in favor of the plaintiffs and against the defendants jointly and severally directing the defendants to return to the plaintiffs all her movables including papers belonging to the plaintiffs and in possession and under the control of the defendants including the items detailed in Schedule I.

(f) to direct the defendants to hand over all shares, securities, deposits, fixed deposits, receipts, income tax and wealth tax returns and assessment orders from 10.2.1989 till date and any other property that the plaintiffs are entitled to out of the marriage, etc., standing in the name of the plaintiffs, to the plaintiffs, and to pay to

the plaintiffs all dividends, incomes, interests and amounts due and payable on rendition of account together with interest at the rate of 22% per annum from their due dates till payment.

(g) the defendants may be ordered jointly and severally to pay to the plaintiffs the cost of the suit.

(h) to grant such further and other reliefs as this Hon'ble court may deem fit and proper in the facts and circumstances of the case.'

3. The application (IA.11261/97) under Section 151 of the Code of Civil Procedure was filed by the plaintiffs praying that during petendency of the suit the following interim reliefs be granted to them against the defendants:-

'(a) to pay the plaintiffs a sum of Rs.5,00,000 the arrears of maintenance towards due from January till October, 1997 vacation expenses, school and medical expenses together with interest @ 22% per annum.

(b) to pay Rs.50,000/- per month from 1.10.1997 with an escalation at the rate of Rs.10,000/- every 2 years.

(c) to promptly and diligently pay the school fees of plaintiff No.2 every quarter and the medical expenses of the plaintiffs.

(d) to provide a residential house to be chosen by plaintiff No.1 comparable with the living standards of the plaintiffs enjoyed by them at their matrimonial home at 24, Olof Palme Marg, Vasant Vihar, New Delhi in South Delhi consisting of a drawing room, dining room, 3 bed rooms, a servant quarter and a garage to the plaintiffs and direct the defendants to bear the monthly house maintenance and running expenses towards electricity, water, general maintenance of the house and property tax.

(e) to return the stridhan assets of the plaintiffs in the possession of the defendants including those mentioned in Schedule annexed to the suit.

(f) to pay to the plaintiffs all such dividends, incomes, interests and any other amounts due and payable on the shares, securities, deposits etc. in partnerships,

companies belonging to the defendants and/or their family members and/or other companies and partnerships that stand in the name of the plaintiffs or to which the plaintiffs are entitled including those mentioned in Schedule II.

(g) to disclose on affidavit the names of the firms, companies, partnership in which they have interests and give full details of all the movable and immovable assets and properties and particulars of the turnover, profits, incomes etc. in which the defendants themselves or with the HUF or the other family members may have interest in the disclose the names of HUFs in which the defendants and/or their families are a part and any larger HUF of which they are coparceners.

(h) injunct the defendants from alienating, disposing, selling, mortgaging, hypothecating or in any manner creating a charge over the movable and immovable or any other assets of the defendants and/or the assets, incomes, shares of the plaintiffs or to which they are entitled.

(i) to pay all necessary medical expenses of the plaintiffs.

(j) to provide for a new car for the plaintiffs.

4. By an interim order passed on 15.12.1997 the defendants were directed to disclose on affidavit the names of firms, companies, partnerships in which they had interest and to give details of all properties.

5. I.A. 2634/98 was filed by the defendants seeking to recall the above interim order dated 15.12.1997. By separate application (IA. 2635/98) filed under Order 7 Rule 11 of the Code of Civil Procedure, the defendants prayed for rejection of the plaint.

6. Learned Single Judge by the impugned order has allowed the plaintiffs application for interim relief by fixing interim maintenance at the rate of Rs. 40,000/- per month and directing the defendants to pay to the plaintiffs/respondents interim maintenance at that rate from 1.1.1997 and to clear the arrears from 1.1.1997 to 30.9.1998 amounting to Rs. 8,40,000/- within a period of two months. Appellants were also directed to continue paying future maintenance month by month at the rate of Rs.40,000/- per month on or before

5th of every month: to pay and deposit school fee and other charges in connection with the studies of respondent No.2 directly in the school, wherever she might be studying: to provide a residence to respondents as per family settlement dated 4.11.1994 within a period of two months. Observing that defendant No.1 had complied with the order passed on 15.12.1997 and the other two defendants had also to a considerable extent complied with the order, there was no reason now to recall the said order dated 15.12.1997. In view of the discussion in the order, learned Single Judge also proceeded to dismiss the defendant appellants application under Order Rule 11 of the Code of Civil Procedure.

7. We heard learned counsel for the parties at length and were taken through the record. In order to appreciate the arguments, it will be neces sary to notice some of the salient facts, as have been brought on record by the parties in their respective pleadings.

8. Appellant No.1. Ravi Shingal and respondent No.1 Manali Singhal were married at New Delhi on 10.2.1989. Respondent No.2 Shreya Singhal was born on 18.3.1991. According to the plaintiffs/ respondents till about November, 1994 appellant No.1 and respondent No.1 continued residing at their matrimonial house at 24, Olof Palme Marge, Vasant Vihar, New Delhi. In 1994 respondent No.1 had to attend to her ailing mother and to travel abroad with her for her treatment. On 21.10.1994 treatment. On 21.10.1994 when respondent No.1 landed at Indra Gandhi International Airport with her ailing mother, appellant No.1 met her at the Air Port and informed that he had already moved out of his family home situated at 24, Olof Palme Marg, Vasant Vihar, New Delhi and did not want to live with her any more. Thus appellant No.1 deserted respondent No.1 under most shocking circumstances. Resultantly, respondent No.1 along with respondent No.2 was forced to move to her parents house at New Delhi. It is further alleged that a settlement was recorded between the appellants and respondent No.1 with regard to certain matters and to provide financial security to the respondents. Under the terms of settlement, the appellants, inter alia, agreed to provide within two months a residential house to respondent No.1, provide a sum of Rs.40,000/- per month free of income tax for maintenance and upbringing of the respondents. Respondent No.2 was to stay with respondent No.1 in her custody. Appellant No.1

agreed to provide a new car for the use of respondent No.1 every three years. In addition, expenses for school and college education were to be borne by the appellants including education abroad and to provide all necessary medical expenses of respondents 1 and 2.

9. It is alleged by the plaintiffs/respondents in the plaint that the appellants committed gross breach of agreement and their contractual, legal and moral obligations. The appellants have failed to provide house as agreed. The cost of living since signing of the agreement had gone up considerably, the amount of maintenance had escalated by more than Rs. 10,000/- per month in two years according to the rate in the cost of living. The amount of maintenance to be provided must not be less than Rs.50,000/- per month exclusive of income tax. The plaintiffs/respondents alleged that the defendants/appellants had failed to provide monthly expenses after December, 1996, namely, from 1.1.1997 till the date of filing the suit, i.e. October, 1997 amounting to Rs.5,00,000/-. The defendants/appellants had also defaulted in paying the school fee of respondent No.2 amounting to Rs.5,000/-. Car No.DL 4CD 6067 for use of plaintiffs/respondents had been given but the appellants had stopped paying for the petrol and other maintenance charges. The vacation, as agreed upon was provided only for the first two years but was not provided for June, 1997. thereforee, Rs.4,00,000/- spent on vacation of respondents in June, 1997 were accordingly to be provided by appellant No.1. It is alleged that till date of filing of suit despite promises and assurances the appellants had defaulted in paying the amounts and performing their obligations under the agreement dated 4.11.1994. The appellants are well known family in the country owning properties at various places and having commercial and industrial establishments in various parts of the country and abroad. They have failed and neglected to adhere to the terms of the agreement. thereforee, the plaintiffs/respondents were left with no alternative except to file the suit for the purpose of enforcing the agreement dated 4.11.1994 and for other allied reliefs. It is stated by the plaintiffs/respondents that out of abundant caution she craves leave of the Court under Order 2 C.P.C. to file appropriate proceedings and other suit, which they are and may be entitled to arising out of and related to the marriage and their share in the business of the firms, companies, partnerships etc. In view of the breach of the terms of the

agreement and also the legal rights of the respondents, the respondents were filing only suit for specific performance of agreement dated 4.11.1994 and for the recovery of stridhan and other properties and rights arising out of the said marriage. In this back ground the aforementioned reliefs were prayed in the suit.

10. The defendants/appellants opposed the suit on merits. Preliminary objections have also been taken that the suit is bad for misguide of parties; respondent No.1 has no right to claim any maintenance from appellants 2 to 4: the suit is bad for misguide of causes of action: necessary particulars with respect to reliefs claimed have not been pleaded: respondent No.1 has claimed relief of maintenance and separate residence, which can only be granted to her under the Hindu Adoption and Maintenance Act: appellant No.1 and respondent No.1 continue to be husband and wife, there is no matrimonial proceedings pending between the parties, thereforee, for claiming the relief of separate residence, she has to plead and prove her case as envisaged in Section 18(2) of the Hindu Adoption and Maintenance Act: the alleged agreement sought to be enforced is void and cannot be specifically enforced for various reasons, namely, (a) the same has been signed by the defendants/appellants under duress and without free consent: (b) the same has been induced by undue influence: (c) it is without consideration: (d) being uncertain is not specifically enforceable: and (e) it is unreasonable. It is also pleaded that appellant No.1 is the natural guardian of the minor respondent No.2 and is entitled to act for and on behalf of the minor. Respondent No.1 was never authorised by appellant No.1 to act as her guardian. The agreement dated 4.11.1994 has also not been signed for and on behalf of the minor and as such the agreement is void and unenforceable at law. The agreement is not relatable to any specific immovable property. The suit for specific performance does not lie.

11. On merits, it is pleaded in the written statement that in July, 1994 respondent No.1 went abroad with her mother, who was under treatment in England. All arrangements of her travel were made by appellant No.1 including purchase of foreign exchange and air tickets. On her return from England with her mother on 31.10.1994, respondent No.1 decided to go to her mother's house from the airport itself. Appellant No.1 had gone to the airport to receive the respondents but respondent No.1 refused to accompany him. The mother of respondent No.1 was

admitted to All India Medical Institute. Without informing the appellants or settling any terms with the appellants, respondent No.1 got the agreement prepared on 4.11.1994 and when the appellants visited the residence of the mother of respondent No.1 to enquire about her well being. Respondent No.1 and her father and brother insisted upon the appellants to sign the agreement. Respondent No.1 used the factum of her mother's terminal illness to emotionally blackmail the appellants into signing the agreement. Respondent No.1 insisted that since her mother was dying, she wanted to tell her mother that all disputes with appellant No.1 had been settled amicably by showing her the signed agreement. Respondent No.1 further represented that the agreement shall not be implemented since it will only be for the satisfaction of her mother, who was terminally ill. Respondent No.1 had also threatened that in case the appellants would not sign the agreement, they would not only be subjected to all kinds of litigation but also to adverse publicity all over the country and they would not get to see respondent No.2. In view of this situation, appellant No.1 was induced to believe that the alleged agreement was merely a paper transaction and was not to be enforced. Considering the state of health of the mother of respondent No.1 and with a view to make her soul rest in peace, he agreed to sign the agreement, without going through the contents thereof. Agreement having two blanks at two places, respondent No.1 asked appellant No.1 to write the figure of Rs.40,000/ at one place and to sign in the margin of the said agreement. The appellants never read any part of the agreement. Thus the appellants were made to sign the agreement under duress and undue influence. The agreement was not executed with their free consent. Appellants 2 to 4 are not legally liable to provide any maintenance to the respondents during the life time of appellant No.1. As such the appellants refused to perform the agreement soon after it was signed. Respondent No.1 also did not insist for it. Subsequently, parties exchanged notes and correspondence to resolve the disputes and to have the marriage dissolved by mutual consent but respond ent No.1 did not come forward to implement any of the proposals exchanged between the parties.

12. Respondents have refuted the appellants stand. In the light of these pleadings the three applications were dealt with by learned Single Judge. After noticing the stand taken on behalf of the appellants during course of arguments learned Single

Judge observed that the suit was for enforcement of family settlement in which the appellants have themselves agreed to pay, inter alia, maintenance to the respondents at the rate of Rs. 40,000/- per month. It was not a case implicate for fixation of maintenance under the Hindu Adoption and Maintenance Act. Turning down the submissions made on behalf of the appellants, learned Single Judge proceeded to allow the application for interim relief by directing the appellants to pay maintenance w.e.f. 1.1.1997 at the rate of Rs.40,000/- per month and also for the duration of the suit. Arrears till 31.12.1998 were directed to be paid within two months in addition to providing a residence and amount for studies of respondent No.2.

13. On behalf of the appellants, it was contended by Mr. Kapil Sibbal that the agreement in question cannot be specifically enforced. It cannot be said to be an agreement in the eyes of law. There is no single reciprocal obligation on the part of respondent No.1 to be performed by her. There is absence of proposal and absence of consideration in the agreement. It is per se void. Number of arguments were raised before learned Single Judge. Most important being the question of jurisdiction to entertain and decide such a suit for specific performance of an agreement. Such an agreement between husband and wife per se was not enforceable in a court of law. Respondent No.1 being wife and respondent No.2 being child of appellant No.1 at the most were entitled to maintenance and had to resort to the provisions of Hindu Adoption and Maintenance Act for claiming maintenance. On the question of entitlement of maintenance between husband and wife, who are Hindus, provisions of Hindu Adoption and Maintenance Act would apply. The right of maintenance flows out of Section 18 of the said Act and Section 23 provide for fixing maintenance. Public policy require that right of maintenance has to be claimed only under the provisions of the Hindu Adoption and Maintenance Act. While determining the amount of compensation, if any, to be awarded to a wife and children discretion has to be exercised by the Court having regard to various factors, such as, the position and status of parties; the reasonable wants of the claimant; if the claimant is living separately, whether the claimant is justified in doing so; the value of the claimant's property and any income derived from such property or from the claimant's own earnings or from any other source; and the number of persons entitled to maintenance under this

Act. Similarly, Section 23 also provide for taking into consideration various factors while awarding maintenance. As such filing of suit for specific performance is not an appropriate remedy, which the plaintiffs/respondents have resorted to without even making necessary averments of her readiness and willingness to perform her part of the agreement, in the absence of which the suit must fail.

14. Mr. Sibbal further argued that the suit in the present form is not maintainable, the remedy of respondent No.1 was to file an appropriate suit for maintenance in which at the most agreement in question could be produced as a piece of evidence which the Court might look into while determining the amount of maintenance payable to the respondents under Section 23 of the Hindu Adoption and Maintenance Act. Such an agreement cannot even form the basis of a suit for maintenance. When the law enjoins upon the Court to exercise its discretion in determining the amount of maintenance by taking into consideration various factors, the Court cannot exercise its jurisdiction by proceeding to pass an order on the basis of the agreement without taking into consideration those factors, which are required to be taken, such as, position and status of parties; value of the claimant's property; and reasonable wants of the claimants. Before learned Single Judge could proceed to dispose of the interim application, it was obligatory on his part to have proceeded to decide the question of maintainability of the suit and other objections, in the absence of which learned Single Judge acted with material irregularity in exercise of his jurisdiction in mechanically passing the impugned order of maintenance. Even in such like suit, no order ought to have been passed by directing the appellants to pay arrears of maintenance. This suit being for specific performance, it lacks necessary averments, as provided in clause (c) of Section 16 of the Specific Relief Act. In absence of such averments, the plaint is liable to be rejected. In any case it being a suit by the wife and child against appellant No.1 being not maintainable in view of the provisions of Hindu Adoption and Maintenance Act, the plaint ought to have been rejected.

15. It was also contended that disputed questions of fact arise for consideration, which have been raised by the defendants/appellants in their written statement, which have yet to be gone into during the trial. Most important being the right of the respondents to claim maintenance from appellants 2 to 4, maintainability of a

suit of such a nature qua appellants 2 to 4, validity of the agreement that whether or not the same is void because of the circumstances, as have been brought on record including coercion, undue influence and absence of consideration. Without going into these questions, learned Single Judge mechanically proceeded to make the agreement as the basis while passing the interim order of maintenance. Learned Single Judge erroneously held the suit to be maintainable for enforcement of family settlement. The subject matter of a family settlement can only be a title or claim to title to a property or custody of child and not for maintenance. Each party to the family settlement must have antecedent title to the property. There is no antecedent title of respondent No.1 to any of the properties of the alleged Hindu Undivided Family as such there is no question of its being enforced against appellants 2 to 4. At the most the alleged agreement dated 4.1.1994 is unilateral declaration by appellant No.1 without any obligation on the part of the wife. In a suit for specific performance readiness and willingness of the plaintiff to perform his/her obligations have to be alleged and proved. It is not stated in the plaint by plaintiff No.1 that what were her obligations under the agreement. Whether she had performed that part of her obligations or that whether she was prepared and willing to perform her part of the obligations under the agreement. This being a case in which nothing was required to be done or performed by the plaintiffs/ respondents under the agreement, thereforee, the same is not specifically enforceable and the alleged filial obligations mentioned in the agreement cannot be said to be legal obligations of appellants 2 and 3 towards the plaintiff.

16. Mr. Arun Jaitley, appearing for the respondents contended that the suit is for specific performance of a family arrangement/ settlement. The parties to this family settlement are husband and wife, the parents in law of the wife and the Hindu Undivided Family, who had agreed to provide maintenance and have duly signed the settlement. The appellants being persons of grown age and of competent understanding and having the utmost liberty of contracting, there being prima facie no material on record that when the agreement was entered into that it was not entered into freely and voluntarily, thereforee, there was no reason that why the agreement be not respected and enforced by courts of justice. Public Policy also requires that the agreement be got respected. The questions raised by the

defendants/appellants, no doubt have to be decided at the trial but at this stage when even prima facie there is no material on record justifying avoidance of the agreement, the same must be upheld. The validity of the agreement has to be upheld rather than finding fault therein. There is no prohibition in law that such a family settlement or agreement cannot be entered into. Section 25 of the Hindu Adoption and Maintenance Act envisages explicitly for such a family settlement and there have been instances where such agreements have specifically been enforced by way of civil suits.

17. It was vehemently contended by Mr. Jaitley that the plaintiff/respondent's suit is not for grant of a decree of maintenance as such. It is a suit for enforcing the agreement/settlement. Courts discretion is not involved under Section 23 of the Hindu Adoption and Maintenance Act. This being a suit for specifically enforcing the agreement of maintenance, so long as the agreement is not set aside or is declared to be void, the appellants are legally bound to perform each and every part of it. Only when the appellants would come and pray for variation in the terms of the agreement, as envisaged in Section 23 of the Hindu Adoption and Maintenance Act, the Court might consider such a request by altering the amount of maintenance, provided it is shown that there have been material change in the circumstances justifying such alteration. Such family settlement/agreement and such suits for specific performance have always been recognised and respected by law. It was contented that the preexisting statutory entitlement of maintenance of respondent No.1 from her husband (under Section 18(1) of the Act) and jof respondent No.2 from her father (under Section 20(1) of the Act) stood crystallised by quantification under the settlement. Having been quantified into a settlement it precludes a suit for the same purpose under Section 23 of the said Act. Quantification already having been done by the parties themselves would be a relevant consideration as mentioned in subsection (2) of Section 23 amongst the factors to which regard is to be had in determining the amount of maintenance under subsection (1) of Section 23.

18. Learned counsel for the respondent further contended that the preexisting non statutory entitlement of the plaintiffs/respondents from respondent No.4, namely, Hindu Undivided Family, its karta, namely, appellant No.2 and from other

members of the coparcenary, namely, appellant No.3 under the customary Shastric Law, has also been crystalised in the agree ment. This also precludes a suit under the customary law for the same purpose. Hindu Adoption and Maintenance Act is not exhaustive on the law of maintenance but only in respect of matters dealt with in the Act. The Act would not apply to those Hindus, whose relationship is not provided for in the Act in regard to maintenance. Even if there is no contract for the purpose, no suit could lie under subsection (1) of Section 23 of the Act, as the cause of action would not be founded 'under the provisions of the Act'. The right to have the family settlement enforced on its own terms through a suit for specific performance is strengthened and not weakened by the statutory recognition of the underlying rights of the plaintiffs. Consideration, according to learned counsel for the plaintiffs/respondents for the agreement being to (a) provide security for daughter in law and grand daughter by appellants 2 and 3 and to the wife and daughter by appellant No.1 and (b) forbearance to sue appellant No.1 for maintenance on the basis of statutory entitlements to maintenance; (c) forbearance to sue appellant No.1 for judicial separation/divorce and all appellants for damages/declaration on the ground of cruelty and desertion: (d) forbearance to sue all the appellants for share in H.U.F. business including for relief of rendition of accounts and also forbearance and prosecution of appellant No.1 for adultery; of all appellants for offences arising out of cruelty etc. arising out of fraudulent ousting from family business; (e) forbearance from doing acts that would bring adverse publicity of all the appellants etc. (Adverse publicity would have been even financially injurious to the appellants business): (f) forbearance from maligning all the appellants before others; from making moral/legal claims from all the appellants; promise and commitment by respondent No.1 to appellants to perform even the preexisting obligation of taking peace and goodwill and promise and commitment to reduce scope of future differences in the family were good consideration, which is apparent on the record, to support the promise of appellants No. 2 and 3. Not suing even their son is consideration.

19. The family settlement/agreement is not void on account of having been signed by appellants. Agreement is binding on the appellants till it is set aside or reversed at their behest. It is unethical even to plead undue influence that three like minded adults who happen to be shrewd businessmen could together come under such

undue influence of one or two other persons that they signed an agreement against their own free will. The appellants being bound by the agreement and there being nothing on record to suggest that why there should be variation in the clauses of the agreement, learned Single Judge was perfectly justified in directing the appellants to comply with the terms of the agreement by providing maintenance and residence to the respondents. Residence being part of the agreement and having agreed to provide one, there is nothing wrong in the impugned order in directing the appellants to provide maintenance to the respondents. It was contended that at this stage learned Single Judge was justified in taking prima facie view on the matter on the basis of relevant factors. thereforee, it is not a case for interference in exercise of discretion of learned Single Judge.

20. We have considered the submissions made on behalf of the parties and been taken through the record. We are of the view that at this stage of the proceedings the questions raised need not be gone into by us in detail except by taking a prima facie view of the matter regarding maintainability of the suit and on the question that whether the plaint is liable to be rejected or not and the legality and propriety of the impugned order.

21. Rule 11 of Order 7 of the Code of Civil Procedure enacts that the plaint shall be rejected on four grounds mentioned in clauses (a) to (d). The question of maintainability or defect in the plaint has to be examined with reference to the averments made in the plaint. In disposing of a suit under Rule 11 of the Code, the Court ought not to dismiss the suit but is empowered only to reject the plaint. One of the grounds on which plaint can be rejected is that it does not disclose a cause of action. To enable the Court to reject the plaint on the ground that it does not disclose a cause of action where the plaint is based on a document, the Court is entitled to consider the said document also and to see if on conjoint reading thereof a cause of action is disclosed. However, validity of the document cannot be considered at this stage. In asking the Court to decide an issue whether the plaint discloses a cause of action or not, the defendant must be taken to admit, for the sake of argument, that the allegations of the plaintiff made in the plaint are truemodo et formain manner and form. The power to reject the plaint under this

clause can be exercised only if the Court comes to the conclusion that even if all the allegations are proved, the plaintiff would not be entitled to any relief whatsoever.

22. After narrating background, the plaintiffs/respondents have in para 4 of the plaint alleged that a settlement was arrived at between the plaintiffs and the defendants with regard to certain matters and to reduce the incidence of differences, an agreement dated 4.11.1994 was recorded to provide financial security to the plaintiffs. The plaintiffs reproduced the clauses of settlement entered into between plaintiff No.1 and defendants 1 to 3 stating that the defendants including H.U.F. agreed to provide financial security to the plaintiffs. The plaintiffs thereafter alleged that the defendants had failed to provide monthly maintenance after December. 1996. Plaintiff No.1 on several occasions called upon the defendants to pay the amounts and fulfilll their obligations under the agreement but they have defaulted in paying the amount and the performing their obligations. It is also alleged that the defendants are well known family in the country. They own properties in the posh locality of New Delhi, Mumbai, Udaipur and Allahabad and have a large commercial and industrial establishments, several corporate and partnership businesses having lucrative and high returns. The partnership companies and businesses are family businesses and they own substantial properties in many parts of the country. The plaintiffs alleged that they were left with no alternative but to file the suit for purpose of enforcing the agreement dated 4.11.1994. The agreement, specific performance of which is sought by the plaintiffs, reads as under:-

'THIS MEMO OF SETTLEMENT AT NEW DELHI ON THIS 4TH DAY OF NOVEMBER, 1994 by and between

1. Shri Ravi Singhal

son of Shri Vivek Singhal

resident of 24, old of Palm Marg,

Vasant Vihar, New Delhi

(hereinafter referred to as husband)

2. Smt. Manali Singhal

wife of Shri Ravi Singhal

at present resident at

37, Aurangazeb Road

New Delhi

(hereinafter referred to as wife)

3. Miss Shreya Singhal

d/o Shri Ravi Singhal and Smt. Manali Singhal

at present resident at

37, Aurangazeb Road

New Delhi

(hereinafter referred to as daughter)

4. Shri Vivek Singhal

s/o Shri Singhal

resident of 24, Olof Palme Marg,

Vasant Vihar, New Delhi

(hereinafter referred to as grand daughter)

5. Smt. Manjula Singhal w/o Shri Vivek Singhal,

resident of 24, Olof Palme Marg,

Vasant Vihar, New Delhi

(hereinafter referred to as grand mother)

WHEREAS the husband wife above named were married at New Delhi on 10.2.1989 from which wedlock a female child by the name Shreya was born on 18.3.1991.

AND WHEREAS the husband Ravi Singhal desired separation and for that purpose moved out of the house, as a result whereof the wife and minor daughter were forced to move to her parents house for no fault of theirs.

AND WHEREAS it is considered expedient that there be a settlement with regard to certain matters so that incidence of differences can be reduced and security provided to the wife and the daughter.

AND WHEREAS the husband, grand father and grand mother in discharge of their duty and in settlement of claims of the wife and the daughter agree to provide a residential house and maintenance consistent and comparable with the living standards of the wife and daughter they had at 24 Olof Palme Marg, Vasant Vihar, New Delhi, which was the martial house of the husband and wife, as detailed below, and also look after the maintenance of the daughter.

AND WHEREAS the parties were able to settle this matter on 4.11.1994.

AND WHEREAS it was considered expedient to draw out a memo of settlement so that there may be no uncertainty or vagueness about its terms in the future and an accurate record may be maintained of what had been settled upon.

NOW thereforeE THIS MEMO proceeds to accurately record this settlement arrived at between the parties on 4.11.1994:-

1. That in discharge of filial obligations and other liabilities the husband as also the grand father and grand mother (including their HUF) agreed to provide a residential house in South Delhi consisting of a drawing room, dining room, three bed rooms, a servant quarter and a garage to the wife and the daughter in which the wife could have a life interest and corpus would belong to the daughter. The

house maintenance and running expenses will also be provided by them. The maintenance of the house which has been provided include electricity, water and general maintenance including property tax.

2. In addition thereto they agreed to provide a sum of Rs.40,000/- (Rupees forty thousand only) per month free of income tax for the maintenance and upbringing of the daughter as also some money towards maintenance of wife. This amount of Rs. 40,000/- would escalate I future years as the cost of living increases.

3. That the minor daughter will stay with the mother and in her custody.

4. That the house will be provided within a period of three months and it will be chosen by the wife and will be to her satisfaction and the maintenance will be provided from month to month from this date.

5. In addition to this the husband shall provide the wife and daughter a new car every three years for the use of the wife and daughter. If the car is in the ownership of the wife the sale price thereof shall be adjusted while buying a new car.

6. That in addition to the school and college education if the daughter at any stage is to be educated abroad, the husband shall provide and be liable to pay the full expenses of the education of the daughter anywhere in India or abroad.

7. The husband shall provide for a fully paid vacation once a year for a period of thirty days to the daughter and wife. The expenditure towards this vacation shall be borne by the husband in full and will be commensurate with the first class holidays of the choice of the wife and the daughter.

8. That the husband shall provide for all necessary medical expenses of the wife and daughter regardless of whether such medical expenses would be made in India or abroad.

9. That the husband is morally bound and agrees to provide at the time of the marriage of the daughter for all the expenses that would be incurred then.

IN WITNESS WHEREOF the parties have set their hand to this Memo as being an accurate record of the settlement that was arrived at on this 4th day of November. 1994.'

23. Section 9 of the Code of Civil Procedure empowers and enables a Civil Court to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. A litigant having grievance of a civil nature has, thereforee, independently of any statute, a right to institute a suit in some or other civil court unless its cognizance is either expressly or impliedly barred. A suit of civil nature can be defined as a suit, the object of which is the enforcement of a civil right or obligation. Rights under contract are civil rights enforceable by statues in a civil court unless the suit is barred either expressly or impliedly.

24. At the cost of repetition it may be observed that learned counsel for the appellant placing reliance upon the provisions of Hindu Adoptions and Maintenance Act, 1956 urged that for enforcing maintenance, the plaintiff might to have filed a suit under the provisions of the said Act in which eventuality the Court would be entitled to exercise its discretion, as envisaged under Section 18 of the Act in fixing the amount of maintenance having regard to the factors mentioned in Section 23. Needless to add that it is the case of the plaintiffs/respondents that the suit has not been laid for claiming maintenance under the provisions of Hindu Adoptions and Maintenance Act, 1956. As such there is no question of applicability of Section 23(1) of the Hindu Adoption and Maintenance Act. On a plain reading of the plaint, it can be seen that it is not a suit for maintenance but a pure and simple suit seeking enforcement of the settlement arrived at between plaintiff No.1 and the defendants/appellants. There is no provision in the Hindu Adoptions and Maintenance Act, 1956, which debars filing of such a suit. The Act is not an exhaustive on the law relating to maintenance among Hindus. It is an Act to amend and codify the law relating to adoptions and maintenance among Hindus.

25. Learned Single Judge of Bombay High Court in Krishna Madhav Ghoul and others v. Padmani bai Mohan Ghule 1977 Mh.L.J. 402 examined the question of right of maintenance of a wife out of coparcenery property and observed that no provision has been made in the Hindu Adoptions and Maintenance Act, 1956

relating to the right of a coparcener's wife to be maintained out of the coparcenery property. Such a right was part of the Old Hindu Law. The Manager of a Joint Mitakashra family is under a legal obligation to maintain all members of the family, their wives and their children. It was held:-

'Obligation to maintain these persons arises from the fact that the Manager is in possession of the family property. (See Kamal mal v. Venkatlaxmi). The Hindu Adoptions Maintenance Act has no doubt provided for the personal liability of the husband to maintain his wife and the liability attached to the property inherited by the heirs in so far as dependents are concerned. The Act has not made any provisions regarding the maintenance of the wife of a coparcener. thereforee, the old principles of Hindu Law in this behalf continue to apply. The statutory right of maintenance given under section 18 avails to the wife against her husband whether he has or has not any property. It is the personal liability of the husband to satisfy this right. As long as the family continues to be joint the coparcenery must be held to possess the property belonging to the husband and hence all its members are also liable to maintain the plaintiff.

It is also well settled that when a coparcener's wife has a right of maintenance it can be made the subject matter of a charge on the property of the coparcenery by a decree of the Court.'

26. Full Bench of Andhra Pradesh in Ganta Kondamma Vs . Ganta Seethamma : AIR 1973 AP319 held that the Hindu Adoptions and Maintenance Act has undoubtedly brought about some material and important alterations and modifications in the rule of Hindu law relating to maintenance, the Act, however, is not exhaustive on the law of maintenance, but in respect of matters dealt with in the Act it supersedes the rule of law of maintenance previously applicable to Hindus. The Act also supersedes any other law contained in any legislation, Central or State in so far as such legislation is inconsistent with the provisions of the Act.

27. Similar view was taken by a Division Bench of Rajasthan High Court in Dhanraj Jain Vs . Smt. Suraj Bai that the Hindu Adoptions and Maintenance Act codifies and amends the law of adoption and introduced radical changes in the

prior law. Section 4 of the Act gives overriding effect to the provisions of the Act. However, a codifying statute does not altogether obliterate the old law with respect to the matters for which provision is not made in the Act. The prior law ceases to have effect to the extent laid down in that Section. As an inevitable corollary it also follows that in respect of matters for which no provision is made in the Act, the old law must continue to remain applicable.

28. The plaintiffs have brought suit seeking specific enforcement of the settlement, the terms of which are recorded in the agreement. In case the defendants/appellants are in law entitled to seek avoidance of their obligations, they will be at liberty to contest the suit on merits but so long as the defendants do not succeed, they are bound by the terms of agreement. Section 25 of the Hindu Adoptions and Maintenance Act empowers the Court to alter the amount of maintenance due to change of circumstances. It reads:-

'The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.'

29. Section 25 of the Act postulates the existence of an agreement fixing maintenance. It is by virtue of Section 25 of the Act that the amount of maintenance agreed to in the agreement can be altered provided there is material change in the circumstances. This is irrespective of any clause to the contrary in the agreement. When amount of maintenance has been fixed by the parties in an agreement not only the parties are entitled to the amount of maintenance but any party to the agreement can also approach the court seeking alteration in the amount of maintenance due to change in circumstances.

30. The scope of Section 25 of the Act was considered by Andhra Pradesh High Court in Paturi Veeranna and another Vs . Paturi Seethamma : AIR 1969 AP15 wherein it was held:-

'A careful reading of that section would reveal that the section confers ample powers on the Court to vary, modify or even discharge any order fixing the amount of maintenance made by a decree of Court or alter the agreement, if entered into

by the parties. This can be done even in a case where there is an agree- ment that no enhancement would either be demanded or be given. Of course, the alteration would be made only if there are material changes in the circumstances justifying such alteration. What, however, must be remembered is that 8.25 of the Act relates only to such decrees or agreements which are in favor of persons who either under the traditional. Hindu law or under the Act, are entitled to maintenance and such decrees or agreements are suffered by persons who are obliged to maintain them. In other words in order to take advantage of 8.25 of the Act, the maintenance agreement must be in favor of a person who either under the Old Hindu law or under the Act is entitled to claim maintenance from a person who is a party to such an agreement. Any other agreement will obviously fall outside the scope of Section 25 of the Act. It is true that 8.25 is retrospective in its operation. It applies even to a case where the agreement of maintenance is entered into between the parties either before the Act or it is entered into after the commencement of the Act.'

31. In Smt. Sandhya Chatterjee Vs . Salil Chandra Chatterjee : AIR1980 Cal244 agreement between husband and wife entered into by which husband had agreed to maintain wife and children under which she agreed to live separately, it was held that such an agreement was not opposed to public policy and was enforceable.

32. In Subhash Chandra v. Narbadabai AIR 1982 MP, the respondent Narba davi had sought enforcement of her right of maintenance granted to her by husband of Gulab Bai, who during the of the appeal expired and was represented by her legal representative Subhash Chandra on the basis of an agreement. It was held that where right of the plaintiff is not founded upon any text or rule of Hindu Law whether before or after the Hindu Adoptions and Maintenance Act but is based upon a contract, which is enforceable, the provisions contained in Section 4 read with Section 21 and 22 of the Hindu Adoptions and Maintenance Act will not bar the enforcement of the rights created under the agreement against the estate of the deceased.

33. It was contended that there was no consideration for the agreement. Appellants No.2 and 3 were under no obligation to provide maintenance to the respondents but the questions is whether such a ground would be a valid ground at this stage to resist the respondent's claim for interim directions, which have been allowed by learned Single Judge on coming to a prima facie conclusion that the agreement is not without consideration and it was bona fide made and recognised by both the sides with a laudable object of putting an end to controversy. Where certain family differences are adjusted by means of a compromise, there is no reason to doubt the bona fides of the arrangement. Such an adjustment of the dispute with a view to maintain amity and peace in the family satisfies all the requirement of a family settlement. In case due to circumstances, which were in existence on the date when the agreement was arrived at, in order to maintain amity and peace in the family, a settlement was arrived at by which the appellants jointly agreed, as the terms of the agreement suggest, to provide financial security to the respondents, there is no reason why there should be any suspicion at this stage in the absence of any other material that there was any lack of bona fide.

34. We have to take a prima facie view of the matter at this stage especially when the rights of the parties are yet to be adjudicated upon on full trial of the case. Legality and validity of the agreement is under challenge on various grounds including coercion and undue influence, which are yet to be adjudicated upon during the course of trial.

35. In Sahu Madho Das and others v. Mukand Ram and Another AIR 1955 S.C. 451, it was held that Courts lean strongly in favor of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes, which might ruin them. Such an arrangement must be upheld.

36. In Ram Charan Das Vs . Girja Nandini Devi and Others : [1965]3SCR841 . it was held that Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes amongst members of a family. It was further held that family in the context is not be to understood in a

narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute.

37. In the Commissioner of Wealth Tax. Mysore Vs . Her Highness Vijayaba, Dowger Maharani Saheb of Bhavnagar Palace. Bhavnagar and others : [1979]117ITR784(SC) , it was held that contractual obligations entered into or arising out of a family settlement are binding, the consideration being purchase of peace of the family, which is good consideration.

38. In Maturi Pullaiah and another v. Maturi Narasimham and others AIR 1966 S.C. 1886, it was held that family arrangement will not generally be disturbed by Courts. Summary and nature of family arrangements and conditions for their validity contained in 3rd Edn.Vol.17 at pages 215-216 in Halsbury's Laws of England was quoted with approval saying:-

'A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term family arrangement is applied.

The principles the Courts should bear in mind in appreciating the scope of such family arrangement are stated thus:

'Family arrangements are governed by principles which are not applicable to dealings between strangers. The Court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families nd has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.'

This passage indicates that even in England Courts are averse to disturb family arrangements but would try to sustain them on broadest considerations of the family peace and security. This concept of a 'family arrangement' has been accepted by Indian Courts but has been adapted to suit the family set up of this country which is different in many respects from that obtaining in England. As in England so in India, Courts have made every attempt to sustain a family arrangement rather than to avoid it, having regard to the broadest considerations of family peace and security.'

39. In K.K. Modi Vs . K.N. Modi and others : [1998]1SCR601 also it was held that validity of family settlement, which settles disputes within the family should not be lightly interfered with. In S. Shanmugam Pillai and others Vs . K. Shanmugam Pillai and others : [1973]1SCR570 it was held that Courts lean strongly in favor of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all.

40. In Kale and others Vs . Deputy Director of Consolidation and others : [1976]3SCR202 , it was held that by virtue of a family settlement or arrangement of a family or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family, which family arrangements are governed by a special equity peculiar to themselves and will be enforced if honestly made. The object of the arrangement is to protect the family from long drawn litigation or perpetual strife's which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. It promotes social justice through wider distribution of wealth. Family thereforee has to be construed widely. It is not confined only to the people having legal title to the property. This position was further upheld in Taraknath and another Vs . Sushil Chandra Dev by Lrs. and others : (1996)4SCC697 .

41. All the aspects of the case, which have been adverted to during the course of arguments were duly considered by learned Single Judge in the impugned order by which learned Single Judge rejected the contention on behalf of the appellants

on prima facie view of the matter that since the appellants are signatories to the agreement, which prima facie is for valid consideration under which the husband, parents inlaw and the H.U.F. had agreed to grant maintenance, thereforee, interim order deserves to be passed in favor of the appellants thereby directing the appellants to continue to provide maintenance till an order is passed by the Court on the appellants approaching the Court for alteration in the amount of maintenance or for any other valid reason Court might come to the conclusion that suit of the plaintiffs/respondents is liable to be dismissed.

42. The question regarding maintainability of the suit cannot be finally adjudicated upon at this stage. Prima facie we are of the view that such a suit is maintainable. Chapter II of Specific Relief Act. 1963 contains rules relating to specific performance of contracts. Section 14 falls within that Chapter and it points to those contracts which are not specifically enforceable. Maintainability of a suit cannot be adjudged from the effect which the decree may cause. It can be determined on the basis of the ostensible pleadings made and the stated reliefs claimed in the plaint. Preamble of Specific Relief Act shows that the Act is not exhaustive for all kinds of specific reliefs. The Act is not restricted to specific performance of contracts as the statute governs power of the Court in granting specific reliefs in a variety of fields. Even so, the Act does not cover all specific reliefs conceivable. Reference in this regard may be made to a decision of Supreme Court in Ashok Kumar Sirivastava Vs . National Insurance Company Ltd. and others : [1998]2SCR1199 . It has been held that:-

'Hence the mere fact that a suit which is not maintainable under Section 14 of the Act is not to persist with its disability of nonadmission to civil courts even outside the contours of Chapter II of the Act. Section 34 is enough to open the corridors of civil courts to admit suits filed for a variety of depletory reliefs.'

43. On reading of the plaint and the contents of the agreement incorporating terms of settlement, specific performance of which has been claimed by the plaintiffs and in view of what has been stated above, we are of the view that there is no ground made out by the appellants on which plaint is liable to be rejected. Suit as laid is maintainable. Plaint does disclose a cause of action. There is also no ground

made out for interfering with the discretion exercised by learned Single Judge, more particularly in view of the principles laid down in Wander Ltd. and another Vs . Antox India P. Ltd. that appellate bench of the High Court hearing appeals against orders passed by Single Judge of the High Court will not interfere with the exercise of discretion by learned Single Judge and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or.

Capriciously or perversely or where learned Single Judge had ignored the settled principles of law regulating to grant or refusal of interlocutory reliefs. An appeal against exercise of discretion is said to be an appeal on principle. Division Bench as an Appellate Court will not reassess the material and seek to reach a conclusion different from the one reached by learned Single Judge, solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by learned Single Judge reasonably and in a judicial manner, the fact that the appellate court would have taken a different view may not justify interference with learned Single Judge's exercise of discretion.

44. In such a suit where plaintiffs have come to the Court that respondents undertook to provide financial security have since January, 1997 not adhered to their undertaking, we find that learned Single Judge did not act arbitrarily or capriciously or perversely and for that reason, we are of the view that no interference is called for in the impugned order.

The appeal is dismissed with costs.