

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

FIRST APPEAL NO. 52 OF 2022

05TH JULY, 2023

BETWEEN:

Abhinav Srivastava

.....Appellant.

And

Mahima Srivastava

....Respondent.

Counsel for the Appellant : Mr. B.D. Upadhyaya, learned Senior Counsel assisted by Mr. Nagresh Aggarwal, learned counsel.

Counsel for the Respondent : Mr. Vineet Sinha and Mr. Jagdish Singh Bisht, learned counsels.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

The parties are present before us. We have interacted with them.

2. The parties were married in the year 2004. They have remained separated from the year 2005. They have a son, who is 18 years of age now. The son is with the respondent- wife. Both the parties are employed. The son has been maintained practically entirely by the respondent- wife throughout his schooling. The son of the parties has cleared the 12th Board Examinations in the year 2022. He is presently preparing for entrance into the engineering colleges, since he wishes to pursue engineering. The appellant and the son have not been in touch over a long time, and presently, they do not have any bond between them. This is rather unfortunate,

as the son is entitled to the love and affection and caring of both the parents, which he is missed out on. The divorce petition preferred by the appellant- husband has been dismissed by the impugned judgment. The petition had been preferred on the ground under Sections 13(1)(ia) and (ib) of the Hindu Marriage Act, i.e. cruelty and desertion. No other litigation is pending between the parties, as informed by the parties to the Court.

3. Looking to the fact that the parties have remained separated since the year 2005, they have agreed to part ways by obtaining divorce by mutual consent.

4. Considering the fact that the respondent has practically single handedly brought up the child over the past more than 17 years, and looking to the financial position of the parties, the appellant- husband is agreed to pay Rs.1,75,00,000/- (Rupees One Crore Seventy Five Lakhs) to the respondent- wife to meet her claims towards permanent alimony, and also to meet the expenses of the child which the respondent- wife has incurred till now, and also to meet his future needs towards education etc.. The appellant has also offered that since his child, namely, Daksh Srivastava, is his only son, his doors are always open for him, and he would like to meet his son and establish a bond with him. He further states that if there is any further need for financial or moral

support that the child needs to establish himself, he would be willing to offer whatever help he can.

5. We have counselled the respondent- wife to encourage the son of the parties to meet the appellant-husband and to develop a bond with the appellant, so as to make up for the lost years when the son has not met and interacted with his father. The respondent- wife has assured us that she would speak to her son, and encourage him to meet the appellant and interact with him.

6. The parties have agreed that they shall move a petition to obtain divorce by mutual consent under Section 13-B of the Hindu Marriage Act. The parties state that they shall move the first motion petition within the next two weeks. It is also agreed that at the first motion stage, the appellant shall make payment of Rs.50,00,000/- (Rupees Fifty Lakhs) to the respondent- wife by way of pay order. The parties would be free to seek exemption for moving the second motion petition without waiting for the expiry of statutory period of six months.

7. Considering the fact that the parties have remained separated since 2005, they have also been in the litigation for a long time, and since there is hardly any chance of their reconciliation, the Family Court shall consider such exemption

application favourably and entertain the same without waiting for the expiry of the statutory period of six months.

8. At the stage of second motion petition, the appellant shall make payment of the balance amount of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs) to the respondent by pay order, whereafter the second motion petition may be disposed of. The parties shall remain bound by the settlement arrived at by them before us, which we have incorporated hereinabove.

9. The appeal is disposed of in the aforesaid terms.

10. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 05th July, 2023

NISHANT