

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF SEPTEMBER 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

MISCELLANEOUS FIRST APPEAL NO.6776 OF 2021 (MC)

BETWEEN:

MR.THIPPESWAMY.A,
S/O SRI ASHWATHAIAH,
AGED ABOUT 41 YEARS,
R/AT: GIRIYANAPALYA,
DODDERI HOBLI, MADHUGIRI TALUK -572 112.

...APPELLANT

(BY SMT.CHAMPOO KAVYA.S. ADVOCATE FOR
SRI SUNIL SASTRY.M., ADVOCATE)

AND:

SMT.SHASHIKALA.N,
D/O SRI.NARASIMHAMURTHY,
W/O SRI.THIPPESWAMY.A,
AGED ABOUT 39 YEARS,
R/AT: KERE GALAPALYA,
KASABA HOBLI, NEAR GURU BHAVANA HOTEL,
MADHUGIRI TALUK-572 132,
ALSO AT OPPOSITE TO DDPI OFFICE,
MADHUGIRI TOWN-572 132.

...RESPONDENT

(BY SRI.MALLIKARJUN.N.K., ADVOCATE FOR
SRI.SAMPATH.A., ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 28(1) OF HINDU MARRIAGE ACT, PRAYING TO SET ASIDE THE ORDER DATED 27.09.2021 AND DECREE DATED 11.10.2021 PASSED IN M.C.NO.54/2017 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MADHUGIRI DISMISSING THE PETITION FILED UNDER SECTION 13(1)(ia)(ib) OF THE HINDU MARRIAGE ACT.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN HEARD AND COMING ON FOR DELIVERY OF JUDGMENT THIS DAY, **JAYANT BANERJI J.**, DELIVERED THE FOLLOWING:

Digitally
signed by K S
RENUKAMBA
Location:
High Court of
Karnataka

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE RAJESH RAI K

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

This appeal is filed by the appellant-husband challenging the judgment dated 27.09.2021 and decree dated 11.10.2021 passed by the Additional Senior Civil Judge & J.M.F.C., Madhugiri in M.C.No.54/2017, and to grant a decree of divorce to the appellant by dissolving the marriage of the appellant and respondent solemnized on 09.12.2001 at Keregala Palya, Kasaba Hobli, Madhugiri Taluk.

2. The appellant had filed a petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955¹ seeking divorce on the grounds of cruelty and desertion. That case came to be dismissed. Against the decree made, the instant appeal is filed.

3. On 11.12.2025, a memorandum of compromise petition under Order XXIII Rule 3 read with Section 151 of CPC was filed duly verified and signed by both the parties, the contents of which are as follows:

**"MEMORANDUM OF COMPROMISE PETITION
UNDER ORDER XXIII RULE 3 READ WITH**

¹ H.M.Act

**SECTION 151 OF CODE OF CIVIL PROCEDURE,
1908.**

The Appellant and Respondent submit as under:-

1. That the instant Appeal is filed by the Appellant as against the Respondent seeking for dissolution of marriage solemnized on 09.12.2001 at Keregala Palya, Kasaba Hobli, Madhugiri Taluk.
2. That out of the wedlock between the Appellant and the Respondent they begot two sons, first son Mr.Rahul who is currently aged about 23 years the second son Mr.Rohit who is aged about 19 years.
3. The Appellant and the Respondent agreed to compromise in view of the advice meted out by their family, friends and well-wishers and pray that this Hon'ble Court be pleased to permit the Appellant and Respondent to file the instant compromise petition before this Hon'ble Court under the infra terms and conditions:-
 - a. The Appellant has agreed to pay Rs.8,00,000/- (Rupees Eight Lakh only) to the Respondent as full and final settlement towards her claims whatsoever including alimony and maintenance as both of them are lawfully wedded husband and wife. The amount of Rs 6,00,000/- is paid by two cheques bearing No.894710 for Rs 1,00,000/- and cheque bearing no.894711 for Rs 5,00,000/- both drawn on State bank of India, Madhigiri Branch. The balance of Rs 2,00,000/- is paid by cash this day in court.
 - b. The Appellant has agreed to bear the Educational expenses of their sons namely 1st son-Mr.Rahul and 2nd son-Mr.Rohit until their post-graduation.
 - c. **That in view of this settlement, this Hon'ble Court be pleased to allow the instant appeal by granting a Decree of Divorce to the Appellant and the Respondent by dissolving the marriage solemnized on 09.12.2001 at Keregala Palya, Kasaba Hobli, Madhugiri Taluk.**
 - d. That the Appellant herein agrees to withdraw the Miscellaneous First Appeal vide MFA No.7861/2024 filed against the Respondent

challenging the Judgment dated 02/09/2024 vide M.C.No.163/2022 passed by the Hon'ble Trial Court Additional Senior Civil Judge and JMFC at Madhugiri.

- e. That in view of the settlement arrived between the Appellant the Respondent, the Respondent undertakes to withdraw the Domestic Violence case vide CrI.Misc 82/2023, Madhugiri and CrI.Misc No.315/2024 for maintenance filed by the Respondent as against the Appellant both pending on the files of the Additional Civil Judge And JMFC, Madhugiri.
- f. That the Appellant and the Respondent shall not claim/s any movable or immovable properties belonging to each other whatsoever in past, present and future or to be acquired or inherited at later stage by both of them.
- g. That the Respondent shall not claim/s any maintenance or alimony whatsoever against the Appellant at present and future.
- h. That the Appellant and the Respondent admit and agree that there is no collusion or force, fraud or any undue influence in filing this instant compromise petition.
- i. That the Appellant and the Respondent shall unconditionally withdraw all the allegations made against each other without pressing on the allegations leveled against each other either orally or expressly and the Appellant and the Respondent agree that they will not interfere with each other's life in present and in future.
- j. That the Appellant and the Respondent have resolved all their disputes against each other and accordingly the Appellant and the Respondent propose to record the said compromise petition before this Hon'ble Court.

WHEREFORE, the Appellant and the Respondent respectively pray that this Hon'ble Court be pleased to allow the Compromise Petition in accordance with the terms and conditions as agreed by the parties and pass a Judgment and Decree in terms of the said compromise Petition in the interest of Justice and Equity.

(Emphasis supplied)

4. On 09.03.2026, this Court noted that the appellant had agreed to pay a sum of Rs.8,00,000/- to the respondent under the memorandum of compromise as full and final settlement towards her claim whatsoever including alimony and maintenance. It was acknowledged that earlier a sum of Rs.3,00,000/- was paid to the respondent and the balance amount of Rs.5,00,000/- was paid by means of a demand draft on that day which was acknowledged. On a request for adjournment sought by learned Counsel for the parties, the case was adjourned.

5. On 18.03.2026, a joint application under Section 13-B of the H.M.Act bearing I.A.No.1/2026 was filed which was signed by both the parties and countersigned by their respective advocates and supported by a joint affidavit. The contents of the petition are as follows:

"APPLICATION UNDER SECTION 13B OF THE HINDU MARRIAGE ACT, 1955

- 1) That the Petitioners submit that the marriage between them was solemnized on 09.12.2001 at Keregala Palya, Kasaba Hobli, Madhugiri Taluk as per Hindu Rites and Customs and out of said wed lock two children are born elder son by name Rahul and younger son by name Rohit both the children are aged major.
- 2) That right from the beginning of the marriage, the Petitioners had severe marital discord and other incompatible problems and things never went on

smoothly and the Petitioners did not have any cordial relationship as Husband and Wife.

- 3) The Petitioners submit that their relationship is handicapped and hampered which cannot be set right due to difference of thinking and character of both the parties. That on account of the differences in temperaments and attitudes, the marriage between the Petitioners has irretrievably broken down and there is no possibility of their living together as husband and wife and there is no chance or scope for reconciliation and they have been living separately for more than five years.
- 4) That the Petitioners humbly submit that both of them have come to the conclusion that they will not be able to live together as husband and wife and bilaterally have decided to break away from the bond of marriage between them, coming together and filing this Application for decree of divorce by mutual consent, out of their own free will and consent. The Petitioners are matured enough to understand that their marriage has reached a point of no return and have decided to dignifiedly part ways by seeking dissolution of their marriage.
- 5) That the Petitioner No.1 has paid a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) to the Petitioner No.2 towards permanent alimony/maintenance as full and final settlement.
- 6) The Petitioner No.1 has agreed to maintain all the educational expenses of their sons namely Rahul and Rohit up to their post-graduation.
- 7) That in view of this settlement, the Petitioner No.1 shall withdraw the Appeal filed before this Hon'ble Court vide bearing MFA No.7861/2024 against the Petitioner No.2 challenging the Judgment dated 02/09/2024 in M.C. No. 163/2022 passed by the Hon'ble Trial Court Additional Senior Civil Judge and JMFC at Madhugiri as Petitioner No.2 has agreed that she shall not precipitate the supra matter in future in view of this Settlement.
- 8) The Petitioners have no claims against each other and they shall not interfere in each other's personal life whatsoever either past, present or in future.

The Petitioners have no objection to lead their independent life as per their wish and will further both the parties shall not make any allegations against each other and shall not interfere in each other's life including past, present and future and the Petitioner no.1 shall not make any claims in relation to maintenance or alimony or whatsoever from the Petitioner No.1.

- 9) That in view of this settlement, the Petitioner No.1 and the Petitioner No.2 shall unconditionally withdraw all the allegations made against each other without pressing on the allegations leveled against each other either orally or expressly and both Petitioner No.1 and the Petitioner No.2.
- 10) That there is no collusion or connivance or fraud or coercion or undue influence between or upon the Petitioners in filing this Application.

Wherefore, the Petitioner No.1 and the Petitioner No.2 respectively pray that this Hon'ble Court may be pleased to allow the Mutual Petition Application in accordance with the terms and conditions as agreed by the parties by dissolve the marriage solemnized on 09/12/2001 at Keregala Palya, Kasaba Hobli, Madhugiri Taluk as per Hindu rites and customs and pass a Judgment and Decree in terms of the same in the interest of Justice and Equity."

6. On 16.04.2026, both parties were present in court.

On behalf of the respondent it was stated that several loans were taken by her for various needs and that she is unable to repay the same because of which, creditors are harassing her. The appellant, stated that he would be willing to consider payment of additional amount towards permanent alimony. The case was adjourned.

7. Thereafter, a memo dated 17.04.2026 was filed on behalf of the appellant, that an additional amount of Rs.2,00,000/- had been paid to the respondent by the appellant by way of online bank transfer which was acknowledged by the respondent.

8. Learned Counsel for the respondent, however, stated that the respondent was being harassed by various creditors and therefore the respondent wanted to withdraw her consent for dissolution of marriage on the ground of mutual consent given in the application under Section 13-B of the H.M.Act.

9. Learned Counsel for the appellant relied upon the judgment of the Supreme Court in ***Dhananjay Rathi v. Ruchika Rathi***² to contend that the application filed under Section 13B of the H.M.Act cannot be withdrawn by the respondent in view of the settlement entered into between the parties.

10. In the case of ***Dhananjay Rathi***, the question considered *inter alia*, was that “whether any party can back out from the settlement agreement arrived at in the mediation proceedings? If yes, in what situation?”

² 2026 SCC OnLine SC 587

11. The Supreme Court considered its judgments in the case of ***Ruchi Agarwal v. Amit Kumar Agrawal***³, ***Anurag Vijaykumar Goel v. State of Maharashtra***⁴, ***Gimpex (P) Ltd. v. Manoj Goel***⁵ as well as the following judgments relied upon by the learned Counsel for the respondent/wife therein:

- (i) ***Sureshta Devi v. Om Prakash***⁶
- (ii) ***Smruti Pahariya v. Sanjay Pahariya***⁷
- (iii) ***Hitesh Bhatnagar v. Deepa Bhatnagar***⁸

12. The Supreme Court noted in ***Dhananjay Rathi*** that the settlement was arrived at after mediation between the parties on specific order of the Court which was later also ratified by the Court.

13. However, before proceeding to further consider the submission of learned Counsel for the appellant in light of the judgment of ***Dhananjay Rathi***, it would be appropriate to refer to some of the aforesaid judgments.

14. In the case of ***Sureshta Devi***, the Supreme Court considered the issue that whether a party to a petition for divorce by mutual consent under Section 13-B of the Hindu

³ (2005) 3 SCC 299

⁴ 2025 SCC OnLine SC 1611,

⁵ (2022) 11 SCC 705

⁶ (1991) 2 SCC 25

⁷ (2009) 13 SCC 338

⁸ (2011) 5 SCC 234

Marriage Act, 1955 can unilaterally withdraw the consent or whether the consent once given is irrevocable.

14.1. The facts of that case were that the husband and wife lived together for about six to seven months. Thereafter the wife did not stay with the husband except for about a month. On 08.01.1985, both of them came to Hamirpur. The wife was accompanied by her Counsel. After about an hour's of discussion, they moved a petition under Section 13-B for divorce by mutual consent in the District Court at Hamirpur. On the next day, the Court recorded the statements of the parties and left the matter there. On 15.01.1985, the wife filed an application in Court, *inter alia*, stating that her statement was obtained under pressure and threat of her husband and she was not even allowed to see or meet her relations to consult them before filing the petition for divorce. She said that she would not be a party to the petition and prayed for its dismissal.

14.2. The District Judge dismissed the petition for divorce. But upon appeal, High Court reversed the order of the District Judge and granted a decree for dissolution of the marriage by mutual consent. The Supreme Court considered the provisions of Section 13-B and observed as under:

11. *The question with which we are concerned is whether it is open to one of the parties at any time till the decree of divorce is passed to withdraw the consent given to the petition. The need for a detailed study on the question has arisen because of the fact that the High Courts do not speak with one voice on this aspect. The Bombay High Court in Jayashree Ramesh Londhe v. Ramesh Bhikaji Londhe [AIR 1982 Bom 302: 86 Bom LR 184], has expressed the view that the crucial time for the consent for divorce under Section 13-B was the time when the petition was filed. If the consent was voluntarily given it would not be possible for any party to nullify the petition by withdrawing the consent. The court has drawn support to this conclusion from the principle underlying Order 22 Rule 1 of the Code of Civil Procedure which provides that if a suit is filed jointly by one or more plaintiffs, such a suit or a part of a claim cannot be abandoned or withdrawn by one of the plaintiffs or one of the parties to the suit. The High Court of Delhi adopted similar line of reasoning in Chander Kanta v. Hans Kumar [AIR 1989 Del 73] and the Madhya Pradesh High Court in Meena Dutta v. Anirudh Dutta [(1984) 2 DMC 388 (MP)] also took a similar view.*

12. *But the Kerala High Court in K.I. Mohanan v. Jeejabai [AIR 1988 Ker 28: (1986) 2 HLR 467:1986 KLT 990] and the Punjab and Haryana High Court in Harcharan Kaur v. Nachhattar Singh [AIR 1988 P & H 27:(1987) 2 HLR 184:(1987) 92 Punj LR 321] and Rajasthan High Court in Santosh Kumari v. Virendra Kumar [AIR 1986 Raj 128:(1986) 1 HLR 620: 1986 Raj LR 441] have taken a contrary view. It has been inter alia, held that it is open to one of the spouses to withdraw the consent given to the petition at any time before the court passes a decree for divorce. The satisfaction of the court after holding an inquiry about the genuineness of the consent, necessarily contemplates an opportunity for either of the spouses to withdraw the consent. The Kerala High Court in particular has ruled out the application of analogy under Order 23 Rule 1 of the Code of Civil Procedure since it is dissimilar to the situation arising under Section 13-B of the Act.*

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]].*

15. *In our view, the interpretation given to the section by the High Courts of Kerala, Punjab and Haryana and Rajasthan in the aforesaid decisions appears to be correct and we affirm that view. The decisions of the High Courts of Bombay, Delhi and Madhya Pradesh (supra) cannot be said to have laid down the law correctly and they stand overruled."*

14.3. Accordingly, the Supreme Court set aside the decree of dissolution of marriage.

15. A three Judge bench in the case of **Smruti Pahariya** noted the facts of the case, that the parties stopped living together from January 2005 and decided to file a petition seeking divorce by mutual consent under Section 13-B of the Act. A joint petition to that effect was filed before the Family Court at Bandra, Mumbai which was registered on 19.05.2007. It was pointed out that there is no force or coercion between the parties in filing the petition. The provisions of Section 13-B(2) of the Act was referred to and discussed. It was noted that both the parties had the same advocate. From the affidavit of the wife it appeared that on 18.11.2007, the advocate received a text SMS in his mobile from the husband that he is unable to attend the Court on 19.11.2007. The next date fixed was 01.12.2007. On 19.11.2007 itself, an application was made by the wife to summon the husband directing him to be present in the Family Court on the next date. Accordingly, the

summons was sent by the Court on 23.11.2007 by courier, which was returned with a remark "not accepting". Pursuant to the directions by the Family Court on 01.12.2007, the bailiff pasted the summons on 03.12.2007 outside the door of the husband's residence and the matter came up before the Family Court on 04.12.2007. On that day the husband was absent. The matter was adjourned to 10.12.2007. But on 05.12.2007, the wife filed a petition before the Family Court with a prayer that the hearing of the matter may be preponed and be taken up on the very same day, that is 05.12.2007. Though the matter was not on the board, it was taken on the board by the Family Court on 05.12.2007 and the decree of divorce was passed *ex-parte* on that date itself. In the light of the aforesaid facts, the Supreme Court considered the following questions:

"11. *In the background of these facts, basically four questions fall for our consideration:*

I. Whether impugned decree of divorce passed by the Family Court on 5-12-2007 is vitiated by procedural irregularity?

II. Whether by conducting the proceeding, in the manner it did, the Family Court acted contrary to the avowed object of the Family Courts Act, 1984?

III. Whether from the absence of the husband before the Family Court on 19-11-2007, 1-12-2007 and 4-12-2007 it can be inferred that his consent for grant of divorce on a petition on mutual consent subsists, even though he has not withdrawn the petition for divorce on mutual consent?

IV. Whether on a proper construction of Section 13-B(2) of the said Act, which speaks of "the motion of both the parties", this Court can hold that the Family Court can dissolve a marriage and grant a

decree of divorce in the absence of one of the parties and without actually ascertaining the consent of that party who filed the petition for divorce on mutual consent jointly with the other party?"

The Supreme Court observed that:

"This fourth question assumes general importance since it turns on the interpretation of the section. Apart from that, this question is relevant here in view of various recitals in the judgment and decree of the learned Judge of the Family Court. It appears that the Family Court granted the decree of divorce by proceeding on the presumption of continuing consent of the husband."

15.1 The Supreme Court noted that the Family Court granted the decree of divorce by proceeding on the presumption of continuing consent of the husband. It was found that the Family Court did not act properly. As regards the service of notice, it was noted that if the service was not proper, the Court should have directed another service in the normal manner and should not have accepted the plea of the wife for affecting substituted service. The Court disapproved the manner of preponing the proceedings to 05.12.2007 and granting the decree of divorce on that very day was frowned upon. The Supreme Court observed that the Family Court did not discharge its statutory obligation under Section 13-B(2) of the Act of hearing the parties.

15.2 It was noted that the statutory duty cast on the Court to hear the party, who was absent, was not discharged. After noticing the institution of marriage and the amended laws existing in foreign jurisdictions, the Supreme Court observed that in **Sureshta Devi**, it was held that the Court at the time of making the enquiry, does not have any **jurisdiction** to pass a decree unless there is mutual consent. It was observed by the Court at paragraph Nos. 38 to 43 as follows:

38. *The decision in Sureshta Devi [(1991) 2 SCC 25 : 1991 SCC (Cri) 292] was rendered by a Bench of two learned Judges of this Court. In a subsequent decision of two learned Judges of this Court in Ashok Hurra v. Rupa Bipin Zaveri [(1997) 4 SCC 226] the judgment in Sureshta Devi was doubted as according to the learned Judges some of the observations in Sureshta Devi appear to be too wide and require reconsideration in an appropriate case. The learned Judges in Ashok Hurra made it clear that they were passing the order in that case on the peculiar fact situation. This Court also held that in exercise of its jurisdiction under Article 142 of the Constitution, a decree of divorce by mutual consent under Section 13-B of the Act was granted between the parties. (See paras 16 and 22 of the Report). It appears that those observations were made by the learned Judges without considering the provisions of the Family Courts Act. In any event, the decision in Ashok Hurra was considered by a larger Bench of this Court in Rupa Ashok Hurra v. Ashok Hurra [(2002) 4 SCC 388]. No doubt was expressed by the larger Bench on the principles laid down in Sureshta Devi.*

39. *It appears that a petition for review was filed against the two-Judge decision in Ashok Hurra and the same was dismissed. Thereafter, the question before the Constitution Bench in Rupa Ashok Hurra was as follows: (SCC p. 396, para 1)*

"1. ... 'Whether the judgment of this Court dated 10-3-1997 [(1997) 4 SCC 226] can be regarded as a nullity and whether a writ petition under Article 32 of the Constitution can be maintained to question the

validity of a judgment of this Court after the petition for review of the said judgment has been dismissed are, in our opinion, questions which need to be considered by a Constitution Bench of this Court.’ ”

40. *In the Constitution Bench decision of this Court in Rupa Ashok Hurra this Court did not express any view contrary to the views of this Court in Sureshta Devi. We endorse the views taken by this Court in Sureshta Devi as we find that on a proper construction of the provision in Sections 13-B(1) and 13-B(2), there is no scope of doubting the views taken in Sureshta Devi. In fact the decision which was rendered by the two learned Judges of this Court in Ashok Hurra [(1997) 4 SCC 226] has to be treated to be one rendered in the facts of that case and it is also clear by the observations of the learned Judges in that case.*

41. *None of the counsel for the parties argued for reconsideration of the ratio in Sureshta Devi.*

42. *We are of the view that it is only on the continued mutual consent of the parties that a decree for divorce under Section 13-B of the said Act can be passed by the court. If petition for divorce is not formally withdrawn and is kept pending then on the date when the court grants the decree, the court has a statutory obligation to hear the parties to ascertain their consent. From the absence of one of the parties for two to three days, the court cannot presume his/her consent as has been done by the learned Family Court Judge in the instant case and especially in its fact situation, discussed above.*

43. *In our view it is only the mutual consent of the parties which gives the court the jurisdiction to pass a decree for divorce under Section 13-B. So in cases under Section 13-B, mutual consent of the parties is a jurisdictional fact. The court while passing its decree under Section 13-B would be slow and circumspect before it can infer the existence of such jurisdictional fact. The court has to be satisfied about the existence of mutual consent between the parties on some tangible materials which demonstrably disclose such consent.*

16. In the case of **Hitesh Bhatnagar**, the facts of the case were that the parties filed a petition under Section 13-B of the Act before the District Court in 2001 for dissolution of

marriage by grant of decree of divorce by mutual consent. However, before the stage of second motion and passing of the decree of divorce, the respondent/wife withdrew her consent and thus the petition came to be dismissed despite the husband insisting for passing of the decree.

16.1. An appeal was filed before the High Court. The learned Judge dismissed the appeal. Aggrieved by the same, the appeal was filed before the Supreme Court. The issues that arose for consideration before the Supreme Court were as follows:

(a) Whether the consent once given in a petition for divorce by mutual consent can be subsequently withdrawn by one of the parties after the expiry of 18 months from the date of the filing of the petition in accordance with Section 13-B(1) of the Act?

(b) Whether the court can grant a decree of divorce by mutual consent when the consent has been withdrawn by one of the parties, and if so, under what circumstances?

16.2 The Supreme Court noted that the parties had filed a petition for divorce by mutual consent due to temperamental incompatibility on 17.08.2001. However, before the stage of second motion the wife withdrew her consent by filing an application dated 22.03.2003. The withdrawal of consent was after a period of eighteen months of filing the petition. Before the Supreme Court the wife stated that she had given the initial

consent under mental stress and duress. She stated that she never wanted divorce and is even now willing to live with her husband as his wife.

16.3 The husband on the other hand submitted that at the time of filing the petition, a settlement was reached between the parties wherein it was agreed that he would pay her Rs.3.5 Lakhs of which Rs.1.5 Lakhs had already been paid in installments. He has stated that he is willing to take care of the wife and their daughter's future interest by making a substantial financial payment in order to amicably settle the matter. The Supreme Court considered its judgment in **Sureshta Devi**. The judgment in **Ashok Hurra v. Rupa Bipin Zaveri**⁹ was also considered in which the Supreme Court had opined that in the decision in **Sureshta Devi's** case, certain observations therein seem to be very wide and may require reconsideration in appropriate cases. However, in **Hitesh Bhatnagar** case, the Supreme Court observed that the observations of this Court in **Ashok Hurra** case cannot be considered to be ratio decidendi for all purposes, and is limited to the facts of that case. It was held that the ratio laid down by the Supreme Court in **Sureshta Devi** holds the field. The

⁹ (1997) 4 SCC 226

judgment of the Supreme Court in **Smruti Pahariya** was also considered and it was observed as follows:

14. *The language employed in Section 13-B(2) of the Act is clear. The court is bound to pass a decree of divorce declaring the marriage of the parties before it to be dissolved with effect from the date of the decree, if the following conditions are met:*

(a) A second motion of both the parties is made not before 6 months from the date of filing of the petition as required under sub-section (1) and not later than 18 months;

(b) After hearing the parties and making such inquiry as it thinks fit, the court is satisfied that the averments in the petition are true; and

(c) The petition is not withdrawn by either party at any time before passing the decree.

In other words, if the second motion is not made within the period of 18 months, then the court is not bound to pass a decree of divorce by mutual consent. Besides, from the language of the section, as well as the settled law, it is clear that one of the parties may withdraw their consent at any time before the passing of the decree. The most important requirement for a grant of a divorce by mutual consent is free consent of both the parties. In other words, unless there is a complete agreement between husband and wife for the dissolution of the marriage and unless the court is completely satisfied, it cannot grant a decree for divorce by mutual consent. Otherwise, in our view, the expression "divorce by mutual consent" would be otiose.

15. *In the present fact scenario, the second motion was never made by both the parties as is a mandatory requirement of the law, and as has been already stated, no court can pass a decree of divorce in the absence of that. The non-withdrawal of consent before the expiry of the said eighteen months has no bearing. We are of the view that the eighteen-month period was specified only to ensure quick disposal of cases of divorce by mutual consent, and not to specify the time period for withdrawal of consent, as canvassed by the appellant.*

16. *In the light of the settled position of law, we do not find any infirmity with the orders passed by the learned Single Judge.*

17. Thus, it is noted that the judgment of **Sureshta Devi** has been approved by the Supreme Court by the three Judges in **Smruti Pahariya** as well as in subsequent decisions like **Hitesh Bhatnagar**. The ratio laid down by the Supreme Court in **Sureshta Devi** still holds the field.

18. In the case of **Dhananjay Rathi**, the Supreme Court, *inter alia*, considered the judgment of **Ruchi Agarwal** (supra), wherein a matter that challenged the order of the High Court, which quashed a criminal complaint filed by the appellant against the respondents which was made alleging offences under Sections 498A, 323 and 506 of IPC and Sections 3 and 4 of the Dowry Prohibition Act. During pendency of the proceedings before the trial Court and the High Court, a divorce petition was filed by the wife before the Family Court, wherein, a compromise was arrived at between the parties, in which the husband was willing for a consent divorce and that the wife had received all her 'stridhan' and maintenance in lumpsum. She also declared in the compromise deed that she is not entitled to any maintenance in future. It was agreed that the parties to the proceedings would withdraw all criminal and civil complaints filed against each other. Before an order could be passed on the compromise petition, the wife wrote a letter to

the Family Court stating that she was withdrawing the compromise petition because she had not received the agreed amount. Subsequently, when her statement was recorded by the Family Court, she withdrew the letter and stated before the Court that she wanted a divorce and there is no dispute in relation to any amount pending. Therefore divorce was granted by the Family Court under Section 13B of the H.M.Act. However, the wife did not take any steps to withdraw the complaint under Section 498A of IPC etc. Therefore quashing petition was filed before the High Court which came to be partially allowed. The Supreme Court noted that the husband had performed his part of the obligation under the compromise deed. Even though the appellant had partially performed her part of the obligations, the Supreme Court was of the opinion that the conduct of the wife indicated that the criminal complaint from which the appeal before the Supreme Court arose was filed by the wife only to harass the respondents. Accordingly, the appeal by the wife before the Supreme Court was dismissed.

19. Next, the case of **Anurag Vijaykumar Goel** (supra) was considered, in which in the proceedings under Section 13B of the H.M.Act, the first motion dated 03.09.2022 for divorce

was recorded by the Family Court on 14.09.2022. But before the second motion, the wife resiled from the agreement which prompted the appellant to approach the High Court for quashing the criminal proceedings before the concerned Metropolitan Magistrate arising out of Crime No.63/2018 dated 19.04.2018. The Supreme Court found that the allegations in the statement of 19.04.2018 based on which the crime was registered against the appellant, *inter alia*, under Section 498A of IPC were common-place, banal and vague, without any specific instances mentioned and filed one year after the admitted separation of the couple. The Supreme Court noted that the High Court had, by the impugned order, rejected the contention of the appellant to quash the criminal proceedings. Though the Supreme Court agreed with the findings of the High Court that the ground raised by the wife that withdrawal from consent on the second motion is in exercise of the statutory right of the wife, however, the other grounds set out in the petition were not considered at all by the High Court. Thereafter, while quashing the criminal proceedings, under the facts and circumstances, following the judgment in ***Shilpa Sailesh v. Varun Sreenivasan***¹⁰, the Supreme Court found that

¹⁰ (2023) 14 SCC 231

the terms of the settlement agreed upon do justice to the estranged wife and do not unduly burden the husband, quashed the criminal proceedings and while exercising power under Article 142 of the Constitution of India, dissolved the marriage between the husband and wife on the ground of irretrievable breakdown of marriage.

20. In ***Dhananjay Rathi***, it was observed by the Supreme Court that once the parties have entered into a settlement agreement duly authenticated by the mediator, in case of any resilement from such terms as agreed upon in the settlement, the resiling party must be encumbered with heavy costs. In this regard, the Supreme Court relied upon the judgment of ***Gimpex (P) Ltd.*** (supra). It was observed as follows:

"30. It is trite law that once the parties have entered into a settlement agreement which was duly authenticated by the mediator, in case of any resilement from such terms as agreed upon in the settlement, the resiling party must be encumbered with heavy costs. Any deviation from the terms of the settlement arrived in mediation and later confirmed by the Court should be dealt with strictly as such deviation harbors an attack to the foundational basis of the entire process of mediation."

21. The Supreme Court also observed that the exception to the rule is that a party can resile from the settlement agreement arrived at in the mediation proceedings,

if it successfully demonstrates that the settlement agreement was procured by force, fraud or undue influence on account of non-fulfilment of any of the conditions by the opposite party, as set out in the settlement agreement.

22. In the instant case, we note that pursuant to the compromise arrived at between the parties, the entire amount of Rs.8,00,000/- towards alimony and maintenance of the respondent has already been paid. Additionally, the appellant has voluntarily paid an additional amount of Rs.2,00,000/-. Therefore, a major term of compromise has been acted upon by the parties. The appellant has also agreed to bear the educational expenses of their two sons. In the memorandum of compromise petition itself, the parties have sought that the instant appeal be allowed by granting a decree of divorce to the respondent by dissolving the marriage solemnized on 09.12.2001. The appellant has agreed to withdraw another miscellaneous first appeal vide M.F.A.No.7861/2024. The respondent has agreed not to claim any maintenance or alimony whatsoever against the appellant at present and future. They have also agreed that there is no collusion or, force, fraud or any undue influence in filing a compromise petition. They agreed to unconditionally withdraw all the

allegations made against each other without pressing on the allegations levelled against each other either orally or expressly.

23. In the gamut of facts aforesaid, it cannot be said that any fraud or undue influence or coercion was exercised by the appellant on the respondent who agreed to the compromise. Therefore, the memorandum of compromise cannot but be accepted and given full effect.

24. The application under Section 13B of the H.M.Act filed by the parties is merely in furtherance of the compromise petition seeking to allow the instant appeal by granting a decree of divorce. Though as per the judgments of the Supreme Court, the respondent has every right to resile from her petition under Section 13B of the H.M.Act on or before the second motion, however, in the facts and circumstances of the present case, the application under Section 13B of H.M.Act can only be referable to the terms of the memorandum of compromise which imply allowing the appeal, not on the ground of cruelty or desertion, but on the basis of mutual consent.

25. This appeal is, therefore, allowed in terms of memorandum of compromise petition and decree of divorce is

granted on the ground of mutual consent. The parties shall be bound to comply with the terms of the memorandum of compromise petition mentioned herein.

26. However, should the circumstances change as mentioned in Section 25(2) of the H.M. Act, or the situations contemplated under Section 25(3) of the H.M. Act happen, then it would be open for any of the parties to move the Family Court.

All pending applications stand closed.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(RAJESH RAI K)
JUDGE**

KSR