

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**FAO No.1509 of 2015 (O&M)
Date of Decision: 18.02.2016**

Amar Somany		Petitioner No.1
	And	
Prerna Sharma		Petitioner No.2

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Ms. Ritu Pathak, Advocate with
Mr. Gaurav Arora, Advocate for
Mr. Ashish Aggarwal, Sr. Advocate
for petitioner No.1
with petitioner No.1 in person.

Ms. S.P.S.Aulakh, Advocate for petitioner No.2
with petitioner No.2 in person.

RAJIVE BHALLA, J (ORAL)

Amar Somany, filed a petition for grant of a decree of divorce, which was dismissed by the District Judge, Family Court, Gurgaon, on 31.01.2015. The appeal filed was pending when parties entered into a settlement and decided to dissolve their marriage by a written compromise (Annexure A-1) dated 07.08.2015, on the following terms and conditions:-

“(i) That parties have agreed for dissolution of marriage by mutual consent.

(ii) The parties have agreed to withdraw the entire litigation if any pending in any court or before any other authority against each other.

(iii) That the First Party shall pay Rs.1,25,00,000/- (Rs. One Crore Twenty Five Lacs only) to the Second Party in the Court against full and final settlement of claims.

(iv) That as submitted above, the First Party shall pay Rs.1,25,00,000/- (Rs. One Crore Twenty Five

Lacs only) to the Second Party in the Court towards full and final settlement of all claims regarding any Jewellery lying in the safe deposit box at SBBJ (Kath Mandi, Rewari), Clothes, Istridhan, gift articles and Maintenance amount i.e. of present, past and future alimony and towards any of her other claims in this respect whatsoever against First Party. Out o the total amount of Rs.1,25,00,000/- (Rs. One Crore Twenty Five Lacs only) the First Party shall pay Rs.12,50,000/- (Rupees Twelve Lacs Fifty Thousand) through Demand Draft No.051913, dated 6.8.2015, HDFC Bank, to the Second Party after signing the Compromise Deed and other relevant documents to be filed in the Hon'ble High Court and the balance amount i.e. Rs.1,12,50,000/- (Rupees One Crore Twelve Lacs Fifty Thousand) shall be paid to the Second Party by way of Demand Draft at the time of final decision before this Hon'ble Court.

(v) That the custody of the minor daughter namely Sara aged about 6 years shall remain with the First Party. The Second Party shall only be entitled to meet the child four times in a one year, as per the convenience of the child and as per mutual adjustments of both the parties. It has been decided that the Second Party will met the child for 3-4 hours on the day of the visit (i.e. for each visit). Furthermore, the Second Party shall not claim the custody of the child in future.

(vi) That the Second Party shall not claim any other maintenance and shall not claim any right, title or interest in any manner in the moveable or immoveable property of the First Party.

(vii) That the Second Party shall have no future interference in the education, social welfare and upbringing of the child and furthermore no direct or indirect contact shall be maintained by the Second Party with the child either by herself or through anyone else/relatives, except for the purpose of meeting the child as per Clause (v) above.

(viii) That both the parties shall be bound to withdraw all the other criminal and civil cases pending against each other and their respective family members. Furthermore, they shall not initiate any litigation against each other and their family members in future and shall not defame through any means of communication and through

social networking sites and electronic medium.”

The parties thereafter filed CM No.16302-CII of 2015, for altering the original petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”) to a petition under Section 13-B of the Act. The application was allowed and the original petition was altered into a petition under Section 13-B of the Act on 17.08.2015. The separate statements of parties in first motion were also recorded, which read as follows:-

“Statement of Mr.Amar Somany, son of Ashok Somany, resident of Flat No.1402, Tower No.15, Orchid Petals, Sohna Road, Sector-49, Gurgaon, on SA.

My affidavit dated 07.08.2015 may be read as my statement in first motion.

Statement of Prerna Sharma, daughter of Prem Kishore, wife of Amar Somany, R/o House No.1285, Sector-3, New Housing Board Colony, Rewari (1st Address), resident of H.No.R-69, Gali No.4, Phase-II, Model Town, New Delhi (IInd Address), on SA.

My affidavit dated 07.08.2015 may be read as my statement in first motion.”

A perusal of their respective affidavits reveal that the parties have agreed to dissolve their marriage on account of irreconcilable differences, settled permanent alimony, maintenance, past, present and future at Rs.1,25,00,000/-, to be paid in terms of the settlement and decided to pray for

dissolution of their marriage by mutual consent.

The petition has come up for consideration after expiry of six months. Counsel for the parties and the parties, who are present, pray that there is no change in their view as they are still of the opinion that it is not possible for them to reside together as husband and wife and, therefore, statements of parties may be recorded in second motion and their marriage may be dissolved.

The parties were directed to record statements in second motion.

Statement of Amar Somany, petitioner No.1 recorded in second motion reads as under:-

"I was married to Prerna Sharma on 03.10.2008 but on account of irreconcilable differences, I filed a petition for grant of a decree of divorce. The petition was, however, dismissed by the District Judge, Family Court, Gurgaon, on 31.01.2015. I filed the present appeal and during pendency of the appeal, we arrived at a settlement and executed a compromise deed. I acknowledge my signatures on compromise deed dated 07.08.2015. I have complied with all terms and conditions of the settlement. The petition under Section 13-B of the Hindu Marriage Act, 1955, has been filed without collusion, coercion, misrepresentation or fraud, pray that our marriage be dissolved by grant of a decree of divorce by mutual consent. I also handed over a demand draft, of the remaining amount i.e. Rs.1 crore to Ms.Prerna Sharma in Court today, in full and final settlement of all claims of maintenance, past, present or future or of permanent alimony. Our minor child Sara, as agreed between us, shall remain in my custody and guardianship and I shall have no objection to visitation rights as recorded in the settlement. I shall withdraw all cases/applications/complaints whether made before a Court, quasi-judicial authority or any other department filed by me or my family members

against Prerna Sharma or her family members. I pray that our marriage be dissolved.”

Statement of Prerna Sharma, petitioner No.2

recorded in second motion reads as follows:-

“I was married to Amar Somany on 03.10.2008. My husband filed a petition for grant of a decree of divorce, which was dismissed, on 31.01.2015. He filed an appeal and during pendency of the appeal, we arrived at a settlement which was reduced into a compromise deed dated 07.08.2015. I acknowledge my signatures on the compromise deed. I have received an amount of Rs.1.25 crores in total (Rs.1 crore having been received today), in full and final settlement of all claims of maintenance, past, present or future of permanent alimony. I have also agreed that the custody and guardianship of our minor child Sara shall remain with Amar Somany, as recorded in settlement. I shall, however, be entitled to visitation rights as agreed. I shall withdraw all cases/applications/ complaints whether made before a Court, quasi-judicial authority or any other department filed by me or my family members against Amar Somani or his family members. I pray that our marriage be dissolved.”

A demand draft bearing No.001280 amounting to Rs.1,00,00,000/- (Rs.One Crore only) has been handed over to Prerna Sharma, petitioner No.2.

Counsel for the parties pray that as parties have resolved their dispute and agreed to part ways by mutual consent, the petition may be allowed and their marriage may be dissolved.

We have heard counsel for the parties, perused averments in the petition, the affidavits filed in support thereof and statements recorded at first and second motion and the settlement.

The parties were personally asked whether there is any possibility of their residing together but both parties emphatically ruled out any possibility of residing together. The parties stated that they have taken a conscious decision that as it is not possible for them to live together on account of irreconcilable differences, the best course for them is to part ways. We are satisfied that the parties have taken a conscious decision to dissolve their marriage as it is not possible for them to live together as husband and wife.

In the absence of any malafide, coercion, misrepresentation or fraud, the petition is allowed and marriage between the parties is dissolved by grant of a decree of divorce by mutual consent. The parties shall, however, remain bound by the terms and conditions of the settlement and perform their respective obligations as set out in the settlement. In case of any difficulty in the performance of any part of the settlement, the parties would be at liberty to approach this Court for further directions. Perna Sharma has received a bank draft bearing No.001280 amounting to Rs.1,00,00,000/- (Rs. One Crore only).

A decree sheet be drawn up accordingly.

[RAJIVE BHALLA]
JUDGE

18.02.2016
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[LISA GILL]
JUDGE