

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 25 of 2014**

- Thaneshwar S/o Sundarlal Awasthi, aged about 35 years, Occupation-unemployee, R/o- Village Bilai, Post Office Pendritarai, Tahsil Bemetara, P.S. Bemetara, District- Durg (now Bemetara) (C.G.).

---- Appellant**Versus**

1. Sanju D/o Ramshankar Shukla, aged about 32 years, R/o Ward No. 12, Behind Bhadra Kali Mandir, Bemetara, P.S. Bemetara, District Bemetara (Correct detail) {Wrongly mentioned as Sanju S/o Satyendra Mishra, aged about 30 years, R/o Bemetara, Tahsil Bemetara, P.S. Bemetara, District Durg (C.G.)}.
2. Satyendra Son of Paduman Singh Misrha, R/o Village Janta, Post Office Odiya, P.S. Dadhi, District- Durg (C.G.).

---- Respondents

For Appellant	:	Mr. P.P. Sahu, Advocate
For Respondents	:	Mr. C.R. Sahu, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Order On Board By
Justice Prashant Kumar Mishra

10/10/2017

1. Present is an appeal under Section 19 (1) of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (henceforth 'the Act, 1955') assailing the judgment and decree passed by the Family Court, Bemetara dismissing the appellant's suit for grant of divorce under Sections 13 (1) (I), 13 (1) (i-a) and 13 (1) (i-b) of the Act, 1955.

2. The parties are residing separately for the last 15 years, which has been confirmed by both of them, as they are present before this Court to press their joint application under Section 13B of the Act, 1955 for grant of divorce by mutual consent.
3. Ordinarily, such an application is to be preferred by way of a separate suit, however, considering the fact that the parties are residing separate for the last 15 years and there is no possibility of their reuniting as they are agreed to grant of divorce by mutual consent and this appeal itself is pending for the last 3 ½ years, therefore, no useful purpose would be served by relegating the parties to the Family Court once again to prosecute the application under Section 13B of the Act, 1955.
4. In the matter of ***Amandeep Singh v. Harveen Kaur, Civil Appeal No. 11158 of 2017***, decided by the Supreme Court on 12/09/2017, it is held that where the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13B(2), it can do so after considering that the statutory period of 6 months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself and that all efforts for mediation/conciliation to reunite the parties have failed and the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between them.
5. In the case at hand, there is no possibility of their reunion and they appear to have genuinely settled their differences, therefore, the

application, i.e., I.A. No. 3/2017 under Section 13B of the Act, 1955 is allowed and a decree for divorce is granted in following terms:-

- i. The marriage between the parties solemnized on 11/06/1995 is dissolved by a decree of divorce by mutual consent;*
- ii. The appellant- Thaneshwar is presently having the custody of both the sons, he shall continue to have the custody of the sons and the respondent-wife has agreed not to seek custody of the sons;*
- iii. Respondent- Sanju (wife) has agreed not to claim any amount towards permanent alimony as she is capable enough to maintain herself; and*
- iv. The parties shall bear their respective costs.*

6. A decree be drawn in the above terms.

Sd/-

Judge
Prashant Kumar Mishra

Sd/-

Judge
Arvind Singh Chandel