

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgement Reserved on: 28/04/2017****Judgement Delivered on: 03/07/2017****FAM No. 94 of 2012**

Lalit Singh S/o Ful Singh, Aged about 52 years, Caste Bhumiya, R/o M-Uchhapind, P.S. and Tahsil Dabhara, District Janjgir-Champa (C.G.)

--- Appellant**Versus**

Smt. Raj Kumari W/o Lalit Singh, Aged about 45 years, Caste Bhumiya, R/o M-Kotmi, P.S. and Tahsil Dabhara, District Janjgir-Champa (C.G.)

---- Respondent

For Appellant	:-	Shri Basant Dewangan, Advocate.
For Respondent	:-	Shri Roop Naik, Advocate.

Hon'ble Shri Justice Pritinker Diwaker**Hon'ble Shri Justice R.C.S. Samant****(CAV) Judgement by Shri R.C.S. Samant J.**

1. This appeal has been preferred against the judgement dated 11-05-2012 passed by Judge, Family Court (Link Court), Sakti, District Janjgir-Champa (C.G.) in Civil Suit No.29-A/2011 by which the petition for divorce filed by the appellant under Section 13(1) of Hindu Marriage Act, 1955 (for short 'the Act') was dismissed.

2. The petition under Section 13(1) of the Act was brought by the applicant before the trial Court alleging that his wife/respondent has deserted him and left for her paternal home at Village Kotmi. Efforts made by the petitioner to bring her back has failed and there is no possibility of reunion between them. On this ground decree of divorce was prayed for.

3. Respondent/non-applicant denied the averments in the petition and stated that she was driven out of her matrimonial home just after 6-7 months of her marriage. Efforts for compromise in the meeting of members of society have failed. The petitioner has performed second marriage with a woman named Heerabai. Respondent has lodged a report on 20-10-1988 in Police Station Dabhara which was not acted upon. Presently, the petitioner is having 5-6 children from his second wife Heerabai. It is stated that the respondent has no objection if the petitioner wants divorce but such divorce may be granted after grant of permanent alimony of Rs.12,00,000/-.

4. The trial Court has framed issues, afforded opportunity for adducing evidence to the parties and after hearing the arguments, has passed the impugned judgement holding that desertion by respondent is not proved whereas cruel treatment and driving out of the respondent from the house of the petitioner is proved. It was also found proved, that the petitioner has performed second marriage, on the basis of these findings, the petition for divorce was rejected.

5. This appeal is brought on the grounds, that the petitioner had successfully proved desertion by his wife and respondent is residing in her paternal home since last 25 years and getting maintenance by order of Judicial Magistrate First Class, Sakti, District Janjgir-Champa (C.G.). On this basis, it is prayed that appeal be allowed and decree of divorce be granted.

6. Efforts were made during the pendency of this appeal for settlement and compromise between the parties. As a result of mediation, a compromise was arrived at between the parties on conditions as follows:

- (i) Both the parties shall apply to the Court for grant of decree for divorce on mutual consent;

(ii) Appellant shall continue paying Rs.1000/- towards maintenance to respondent in compliance of order of the Court.

(iii) Appellant shall pay a sum of Rs.5,00,000/- by a demand draft in lump-sum to the respondent towards permanent alimony.

7. After settlement of compromise in writing between the parties, an application for decree of divorce on mutual consent has been presented, in which it is stated that both the parties have mutually agreed for divorce on conditions of grant of permanent alimony of Rs.5,00,000/- to the respondent by the appellant giving up all the remaining claims against the appellant by the respondent. On this basis, prayer has been made for grant of decree of divorce on mutual consent. Affidavits have been filed by both the parties in support of their application.

8. Both the parties have appeared before the Court on 28-04-2017 and a demand draft of Rs.5,00,000/- was handed over by the appellant to the respondent before the Court. On enquiring about consent for grant of divorce on the basis of mutual consent, both the parties have clearly made the statement before the Court that as per the agreement in compromise, they are willingly consenting for the terms and grant for decree of divorce on mutual consent.

9. As the parties have amicably settled their dispute by their own free will, we are satisfied with the memorandum of settlement dated 24-03-2015. On the basis of compromise arrived at in the presence of mediator, it appears in the interest of the parties. However, the parties have also agreed for annulment of their marriage, the circumstances also exist that respondent is residing separately since last 25 years from the appellant and that appellant has performed second marriage, which clearly demonstrates that there

remains no possibility of reunion between the parties. The application under Section 13-B (2) of the Act with prayer for divorce on mutual consent has been brought during the pendency of this appeal and there is a cooling period of six months provided in this provision. It has been held in the judgements in the matters of **K. Omprakash Vs. K. Nalini, AIR 1986 AP 167, Smt. Krishna Khetrpal Vs. Satish Lal, AIR 1987 P & H 191, Dineshkumar Shukla Vs. Smt. Neeta, 2005 (4) M.P.H.T. 168 (DB)** and in **Manoj Kedia Vs. Anupama Kedia alias Annu (Smt.), 2010 (3) M.P.H.T. 54 (CG)** that the provision under Section 13-B (2) does not apply to an appellate Court and that the provision is not mandatory but directory in nature. Further, it has been held that if the original petition has remained pending for more than six months and during the pendency of main petition, a joint petition is made for divorce on mutual consent, the Court need not wait for the period of six months as directed in the provision and pass order accordingly.

10. Considering the facts of the case and the proposition in law, the present application made by both the parties deserves to be allowed. Hence, the application for decree of divorce on mutual consent of the parties, is allowed.

11. As per the terms of settlement between the parties, relief is granted as under:

- (i) The marriage of appellant and respondent stands dissolved by passing of this order under the provision of Section 13-B.
- (ii) As per the terms of settlement, appellant has paid a demand draft of Rs.5,00,000/- to respondent which has been received and acknowledged by her.
- (iii) The appellant shall continue to make payment of Rs.1000/- per

month to respondent by way of maintenance until and unless
respondent performs re-marriage.

(iv) A decree be drawn accordingly,

12. No order as to costs. This appeal is disposed of.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(R.C.S. Samant)
Judge