

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 262 of 2016

- Nitin Kumar Shukla S/o Shri Satyanarayan Shukla, Aged About 32 Years R/o House No.20, Road-2 A, Steel Colony, Nehru Nagar (West), Bhilai, Tahsil And District- Durg, Chhattisgarh(Plaintiff)

**---- Appellant
Applicant/Plaintiff**

Versus

- Smt. Neha Pandey (Shukla) D/o Shri Vidhushekhar Pandey, Aged About 29 Years W/o Nitin Kumar Shukla, C/o Shri Vidhushekhar Pandey, R/o Quarter No.12-F, Road K.C.S., Sector-8, Bhilai Nagar, District- Durg, Chhattisgarh(Defendant)

**---- Respondent
Non-applicant/defendant**

For Appellant	:	Shri Gautam Khetrapal, Advocate
For Respondent	:	Shri T.K. Jha, Advocate
Appellant & respondent are also present in person.		

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgement

P. Diwaker, J

12/10/2017

1. Appellant- husband has filed this appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (in short 'the Act') against the judgment and decree dated 16.11.2016 passed by the Family Judge, Family Court, Durg in Civil Suit No.713A/2014 by which his divorce petition under Section 13 of the Act was dismissed.
2. The uncontroverted facts are that the appellant was married to the respondent on 8.2.2012 as per Hindu rites at Durg. They lived together till 28.6.2012 and since then they are living separately. Appellant filed a petition seeking dissolution of marriage by way of a decree of divorce mainly on the ground of cruelty. In the divorce petition, the appellant husband pleaded that the respondent does not want to make any physical

relationship with him and that she is not residing with him since long. Respondent-wife filed her reply denying all the allegations of cruelty, desertion etc. According to her, the appellant husband himself was not ready to live with her and wanted a divorce. She never lodged any complaint regarding harassment and cruelty for demand of dowry against the appellant and his family members.

3. The Family Judge vide impugned judgment and decree dismissed the appeal by holding that the appellant failed to prove that he was treated with cruelty by the respondent wife. Hence this appeal.
4. During the pendency of this appeal, on 5.10.2017 the parties filed a joint application for converting the proceedings under Section 28 of the Act to proceedings under Section 13(B) of the Act. In this application, they have mentioned that due to temperamental differences, they have separated. They are living separately since August, 2014. There is no possibility of their reunion. They have settled that appellant husband would pay a sum of Rs.17,00,000/- to the respondent wife through demand draft in full and final settlement of all her claims against the appellant husband.
5. Today, the statements of parties were recorded to verify whether the said application is submitted by them with their free Will and consent, without any force, coercion or undue influence. Both the parties deposed on oath that they have agreed to obtain divorce by mutual consent. They have sworn affidavit in support of that application after understanding its contents. Respondent-wife admitted that she has received bank draft of Rs.17,00,000/- from her husband in full and final settlement of her claims against him. She agreed that in future she would not have any right, title or interest over any property of her husband. She has admitted that she has withdrawn all the proceedings instituted by her against her husband and his family members.
6. Counsel appearing on behalf of both the parties pray that decree of divorce be granted on the basis of compromise arrived at between the parties, in support of which they have already given their statements. They also submit that the parties have entered into this compromise without any undue influence or coercion. The parties were married on 8.2.2012, they lived together only till August, 2014 and since then they are living separately. Many unsuccessful attempts have been made by both the sides for reconciliation. Even during pendency of this appeal, an attempt was made for reconciliation, but in vain. After about three years of living separately, the parties have decided that they should obtain

divorce by mutual consent. They also argued that considering the age-group of the parties, it is in their interest if divorce is granted to them immediately instead of waiting for six months, as is required under Section 13-B (2) of the Act. Both the Counsel argued that if divorce is granted to them without losing this time, the parties may enter into a fresh matrimonial alliance and can resettle in their lives and thus their broken homes can be re-established.

7. We have heard counsel for the parties and perused the material on record.
8. Section 13B (1) of the Act lays down that a joint petition can be filed by the parties alleging that they have been living separately for a period of one year or more; that they have not been able to live together and that they have mutually agreed that the marriage be dissolved. This provision is introduced in 1976 by amendment. The purpose of this provision is to give speedy relief to the parties, if for long they are living separately and there is no possibility of their living together, then their just volitional act should be respected and divorce be granted to them.
9. In **Sandhya Rani v. Kalyanram Narayanan** reported in **1994 Supp (2) SCC 588**, the Apex Court has considered a petition filed under Section 13-B of the Act, by the parties and held as under: -

"....It is not disputed that the parties are living separately for the last more than three years. We have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. The parties have made joint request for mutual divorce. The written request by the parties has been placed on the record. In order to do complete justice between the parties, we are inclined to grant decree in divorce on the following agreed terms."
10. In **Amardeep Singh vs. Harveen Kaur** reported in **2017 Vol.2 SCALE 258** the Hon'ble Apex Court has again considered such a petition and held thus:-

"21. Since we are of the view that the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility

of parties resuming cohabitation and there are chances of alternative rehabilitation"

11. In the instant case also, the parties have been living apart for long and their wedlock has now virtually become a deadlock. Chances of reunion had completely faded away rather there are chances of alternative rehabilitation. Their being educated and financially independent of each other, is sufficient to show that the decision to part company has been taken after due and proper deliberation and serious thought. Even it is axiomatic truth that the broken iron can be joined together, but not broken hearts. In these circumstances, we think that it will be in the interest of both the parties if application for grant of divorce by mutual consent is allowed, waving off the period of six months specified in Section 13B (2) of the Act.
12. Thus, considering all the facts and circumstances of the case, we allow the application (IA No.2/17) and convert the proceedings as one under Section 13B of the Act. Period of six months is waived and a decree of divorce on the basis of mutual consent is granted to the parties with immediate effect. We make it clear that the parties have given up all claims to maintenance and property against each other.
13. Resultantly, the impugned judgment and decree stand reversed. Decree be drawn up accordingly. A copy of the decree be furnished to both the parties free of costs.

Sd/-
(P. Diwaker)
Judge

Sd/-
(R.P. Sharma)
Judge

roshan/-