

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 4-5-2018****Delivered on 19-6-2018****FAM No. 58 of 2017**

(Arising out of the judgment and decree dated 29-11-2016 of the Judge, Family Court, Korba, in Civil Suit No. 18-A/2016)

Smt. Sunita Nankani W/o Shri Mahesh Nankani, R/o Near Sindhu Bhawan, Sani Road, Korba, Tahsil and District Korba, CG, at present R/o Flat No. 506, Muskan Plaza, Shatabdipuram, Jabalpur M.P.

---- Appellant**Versus**

Mahesh Nankani S/o Shri Kanhaiyya Lal Nankani, R/o House No. T/48, Hospital Line, Camp Madhav Nagar, Katni, Tahsil and District Katni, M.P.

---- Respondent

For appellant : Shri Vipin Punjabi Advocate

For respondent : Shri Ratnesh Kumar Agrawal, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. ORDER**Per Sharad Kumar Gupta, Judge**

1. In this appeal challenge is levied to the judgment and decree dated 29-11-2016 of the Judge, Family Court, Korba, in Civil Suit No. 18-A/2016 whereby and whereunder she dismissed the appellant's-wife's divorce petition filed under Section 13 of the Hindu Marriage Act, 1955 (in brevity 'Act of 1955') against the respondent-husband.
2. In brief, case of the appellant is that her marriage was solemnized with respondent on 24-2-1995 in accordance with Hindu religion and customary rites and rituals at Katni, Madhya Pradesh. In their wedlock two children have born namely

Himanshu Nankani aged about 18 years and Kapil Nankani aged about 15 years who are living with her. After the marriage the respondent started harassing her.

3. The respondent remained exparte and did not file written statement.
4. After conclusion of the trial, the trial Court passed aforesaid judgment and decree. Being aggrieved, the appellant has preferred this appeal.
5. During pendency of this appeal, the case was referred to the High Court Mediation Centre where a settlement was arrived at between the parties and both the parties were agreed that they will file an application for divorce by mutual consent. In furtherance thereof, both the parties have filed an application for divorce by mutual consent on 27-4-2018.
6. It would be pertinent to mention the provisions of Section 13-B of the Act of 1955 which reads as under:-

“13-B. Divorce by mutual consent.—(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground 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 should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in

the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

7. In the matter of **Amardeep Singh -v- Harveen Kaur** [(2017) 8 SCC 746], in para 19 and 20 the Hon'ble Apex Court held that :-

“**19.** Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:

- (i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;
- (ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/ Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;
- (iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;
- (iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.

20. Since we are of the view that the period mentioned in Section 13-B(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.”

8. From the above judicial precedent laid down in **Amardeep Singh** (supra), it is unequivocal that provisions of Section 13-B(2) of the Act of 1955 are directory in nature and Court may waive the six months' statutory waiting period considering the circumstances as pointed out in above cited case law.
9. This Court has inquired both the parties. We are satisfied that both the parties have filed the application voluntarily, without any influence or pressure. They have been living separately for a period of one year or more. They have not been able to live together and they have mutually agreed that the marriage should be dissolved. All efforts for mediation/conciliation have failed in saving the marriage and there is no likelihood of success in that direction by any further efforts. Parties have genuinely settled their differences and have honestly and bonafidely decided to part. The waiting period will only prolong their agony. We see a strong case to waive the statutory period of six months under Section 13-B(2) of the Act of 1955. Thus, this Court waives the aforesaid waiting period of six months and orders that the aforesaid marriage solemnized between the appellant and the respondent is dissolved by the decree of divorce from today and the respondent-husband shall pay the allowance for maintenance at the rate of Rs. 10,000/- (Rs. Ten Thousand) per month to the minor child Kapil Nankani through his guardian – mother the appellant, till he attains majority from the date of filing of the application i.e. 27-4-2018.

10. The appeal is accordingly disposed of.

11. Parties shall bear their own costs.

12. A decree be drawn up accordingly.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(Sharad Kumar Gupta)
Judge