

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO.27 OF 2017
WITH
CIVIL APPLICATION NO.5312 OF 2018

Gajanan S/o. Kisanrao Gavai, **...APPELLANT**
Age-39 years, Occu-Service (Teacher),
R/o. Shrikrushnanagar, Plot No.1,
N-2 CIDCO, Aurangabad & At Present
Kanadgaon, Kendra Sultanpur,
Post BazaSawangi, Tq. Khultabad,
Dist. Aurangabad

VERSUS

Sau. Seema W/o. Gajanan Gawai, **...RESPONDENT**
Age-Major, Occu-Service,
R/o.C/o. Advocate A.T.Ingale,
Rama Nagar, Krantichowk,
Aurangabad

Mr.Ajit M. Gholap, Advocate for the appellant
Mr.S.P.Talve, Advocate for the respondent

**CORAM : S.S. SHINDE &
S.M. GAVHANE, JJ.**

RESERVED ON : 17.04.2018

PRONOUNCED ON : 19.04.2018

O R D E R [PER: S.M. GAVHANE, J.]

. The appellant husband whose petition No.A-85/2015 for divorce against respondent wife on the ground of cruelty under Section 13(1)(i-a) of the Hindu

Marriage Act, 1955 was dismissed by the Principal Judge, Family Court, Aurangabad by judgment and order dated 31.05.2017 has preferred aforesaid appeal aggrieved by the dismissal of the said petition.

2. There is no dispute that from the wedlock between appellant and respondent they have two daughters namely Priya aged 14 years and Harshada aged 4 years. They are residing with the respondent. Both the appellant and respondent are teachers by profession.

3. During the pendency of the appeal the parties have explored the possibility of settlement through Mediator. They appeared before the Mediator. Vide report dated 13.04.2018 the Mediator reported that mediation is successful and he annexed compromise pursis with mediation report. Mediation report is marked Exh.'A' and compromise pursis dated 13.04.2018 annexed with said report is marked Exh.'B' for identification purpose. As per the order of the Court dated 16.04.2018 the compromise terms have been verified by the Registrar (Judicial). On 16.04.2018 we have also interacted with the appellant and respondent about the terms of compromise as per pursis Exh.'B'. As per the said compromise pursis the appellant husband has deposited two

demand drafts of Rs.7,50,000/- each in the Registry of this Court towards maintenance, education and marriage expenses of daughters Priya and Harshada who are residing with respondent wife.

4. The appellant and respondent have filed civil application No.5312/2018 stating that during mediation they have realized that there is no possibility of resumption of cohabitation or reunion between them due to irretrievable break down. Then they have mutually agreed for passing of decree of divorce by consent as per Section 13-B on the terms and conditions set out in consent terms. It is further stated that they are residing separately since 3 years 8 months. Therefore they have requested that 6 months waiting period specified in section 13-B(2) be waived in the interest of justice by allowing application. This application is filed by the appellant husband and on instructions learned Advocate appearing for the respondent has given no objection.

5. We have heard the learned Advocates for the parties. Learned Advocate appearing for the appellant made submissions that in the light of above contentions in the application and particularly that parties are

residing separately for more than 3 years, that there is no possibility of reunion in between them and therefore as there is irretrievable break down of marriage of the parties it is just to grant decree for dissolution of marriage by mutual consent under Section 13-B(2) by waiving 6 months period mentioned in the said provision of the Hindu Marriage Act. To support his submissions learned Advocate has relied upon the ratio laid down in the case of Amardeep Singh Vs Harveen Kaur reported in (2017)8 Supreme Court Cases 746 wherein it has been held 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 of one year under Section 13-B(2) 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 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.

6. We have carefully considered the submissions made by the learned Advocate appearing for the parties

and perused the compromise pursis Exh.'B' signed by both the appellant and respondent and their Advocates. Considering the terms of said compromise and the fact that there are no chances of reunion between appellant and respondent i.e. husband and wife, request made by them to waive 6 months period to dissolve their marriage by consent as per Section 13-B(2) of the Hindu Marriage Act needs to be granted and decree of dissolution of their marriage needs to be passed in the interest of justice. Hence the following order.

ORDER

i. Civil Application No.5312 of 2018 is allowed and 6 months waiting period for passing decree by consent as per Section 13-B(2) of the Hindu Marriage Act is waived.

ii. The marriage between appellant Gajanan Kisanrao Gavai and respondent Seema Gajanan Gawai solemnized on 09.05.2002 is hereby dissolved by mutual consent as per Section 13-B(2) in terms of compromise pursis Exh.'B' excluding the term/terms of said compromise debarring the minor daughters from claiming future maintenance or any other right, if any available to them in law.

iii. It is made clear that compromise pursis Exh.'B' will not be an impediment in the right of daughters to claim any right available to them in law after attaining majority.

iv. Out of the amount of Rs.15,00,000/- (Rupees Fifteen Lacs Only) deposited by two demand drafts in the registry of this Court, the Registrar (Judicial) of this Court is directed to keep an amount of Rs.7,50,000/- (Rupees Seven Lacs Fifty Thousand Only) each in the names of minor daughters Priya and Harshada in the State Bank of India, High Court Branch showing their mother respondent- Seema Gajanan Gawai as guardian, till they attain majority. Decree be drawn accordingly.

v. In view of the above Family Court Appeal No.27/2017 is disposed of. No costs.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]