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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13932 OF 2018

Anil Balu Aavhad,
Age: 23 years, Occu: Service,
C/o. Shri Shivaji Baban Aavhad,
R/at 8, Bhimashankar Niwas,
Ganesh Chowk, Bhaatwadi,
Kisan Nagar No.3, Thane(W) ..Petitioner.

V/s.

Sau. Prerana Anil Aavhad,
Age: 21 years, Occu: Business,
C/o. Shri Shivaji Baban Aavhad,
R/at15, Survey No.47/10,
Rohit partment, Old Saikheda
Road, Panchak, Jailroad,
Nashik Road, Nashik ..Respondent.

Mr.Girish R.Agrawal for the petitioner.

Mr.Pradeep D. Dalvi for the respondent.

CORAM: M.S.SONAK, J.

DATE : DECEMBER 12, 2018

ORAL JUDGMENT

Heard Mr.Agrawal, learned counsel for the petitioner and

Mr.Dalvi, learned counsel for the respondent.

2. Rule. Rule made returnable forthwith with consent and at the request of the parties.

3. The challenge in this petition is to paragraph 2 of the order dated July 11, 2018 made by the Family Court, Nashik.

4. The petitioner and the respondent made a joint application under section 14 of the Hindu Marriage Act, 1955 ('the Act' for short) for divorce by mutual consent. They also made a joint application seeking waiver of the statutory period of one year in order to present the petition for divorce by mutual consent as provided under section 14 of the Act.

5. By order dated July 11, 2018, the Family court permitted waiver in terms of section 14 of the said Act. However, the Family Court in paragraph 2 of the order issued the following direction :-

“2) Parties to comply the period of 18 months as contemplated in section 13-B of the Hindu Marriage Act, for mutual divorce. Only the period of one year to present the petition from the marriage is hereby waived. Hence, order.”

6. Learned counsel for the parties jointly point out that the learned Family Court has misread the provisions of section 13-

B of the Act and, therefore, required the parties to wait for a period of 18 months in order to secure divorce by mutual consent.

7. On perusal of provisions of section 13-B of the Act, there appears to be substance in the contention of the learned counsel for the parties.

8. Section 13B of the said Act reads as follows :-

“13B 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 solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 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 solemnised 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.”

9. Section 13-B(2) of the Act provides that when petition for divorce by mutual consent is presented, then, on the motion of both the parties made not earlier than six months after the date of the presentation of the petition and not later than 18 months from such 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 solemnised 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.

10. The aforesaid provisions make it clear there is a bar to both the parties making a motion for disposal of the petition of divorce by mutual consent for a period of 6 months from the date of presentation of the petition. Similarly, there is also a bar to the disposal of such petition after the period for 18 months from the date

of presentation of the petition. In such circumstances, the learned trial Court obviously not right in not requiring the parties to wait for 18 months from the date of presentation of the petition to secure a decree of divorce by mutual consent. At the highest, the learned Family Court should have directed postponement of the matter for a period of 6 months taking into consideration the provisions of section 13-B(2) of the Act. To that extent, the paragraph 2 of the impugned order dated July 11, 2018 warrants interference.

11. Accordingly, the period of 18 months referred to in paragraph 2 of the impugned order be read as “*period of 6 months*”. The impugned order stands modified accordingly.

12. The parties are present in the Court. They state that they desire to take divorce by mutual consent. The period of 6 months from the date of presentation of the petition will expire on January 11, 2019. There is no point in delaying the issue of divorce by mutual consent any further.

13. Therefore, the parties are now directed to appear before the learned Family Court on January 15, 2019 at 11.00 a.m. and file an authenticated copy of this order .

14. The learned Family Court is requested to consider and dispose of the petition for divorce by mutual consent after due satisfaction of the parameters prescribed under section 13-B of the Act. The disposal should be in accordance with law.

15. Rule is made absolute in the above terms.

16. There shall be no order as to the costs.

17. All concerned to act on an authenticated copy of this order.

(M.S.SONAK, J.)