

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 34 of 2017**

- Francis Kaleb Mehekar S/o Fagnu Masih Mehekar, Aged About 34 Years R/o Quarter No. M.I.G. 1/52, Sada Colony, Jamanipali, Tahsil Katghora, District Korba, ChhattisgarhPlaintiff

---- Petitioner**Versus**

- Smt. Preeti Mehekar W/o Francis Kaleb Mehekar, Aged About 32 Years D/o Dhyan Singh, R/o Near Chandra Tent House, Balconagar, Korba, Tehsil And District Korba, Chhattisgarh

---- Respondent

For Petitioner
For Respondent

Mr. Vivek Sharma, Advocate
Mr. Malay Shrivastava, Advocate

**DB: Hon'ble Mr. Justice Prashant Kumar Mishra &
Hon'ble Mr. Justice Gautam Chourdiya**

Order On Board by Prashant Kumar Mishra, J.

27/11/2019

1. Heard.
2. Appellant Francis Kaleb Mehekar and respondent Smt. Preeti Mehekar are present before this Court. They are identified by their respective counsel.
3. The parties have moved an application under Section 10A of the Divorce Act, 1869 (in short "the Act") seeking decree of divorce by mutual consent. It is stated in the application that the marriage was solemnized on 5.6.2006. However, they are

residing separately for last more than 2 years and there is no possibility of their living together in future. It is also stated that the appellant has paid Rs. 8 lakhs through a Demand Draft to his son Arin Anosh Mehekar. Xerox copy of the Demand Draft has been filed as Annexure-A to the application.

4. Section 10A of the Act provides thus :

10A. "Dissolution of marriage by mutual consent.-(1)

Subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage 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 Indian Divorce (Amendment) Act, 2001, on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and 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 presentation of the petition preferred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties in the meantime, the Court shall, on being satisfied, after hearing the parties and making such inquiry, as it thinks fit, that a marriage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 declaring the marriage to be dissolved with effect from the date of decree."

5. Although 6 months have not elapsed after production of the application, but in a recent judgment rendered in the matter of **Amardeep Singh Vs. Harveen Kaur**¹, the Hon'ble Supreme

¹ (2017) 8 SCC 746

Court has held that the provision to the effect that 6 months time is necessary to elapse after presentation of the application, is directory. The said period was laid down to enable the parties to have a rethink so that the court grants divorce by mutual consent only if there is no chance for reconciliation. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The object of the cooling-off period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. The Supreme Court eventually concluded thus in para 19 :

“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.”

6. In the case at hand also, the efforts to mediate between the parties have failed and they have now decided to obtain divorce by mutual consent, the condition whereof has been complied by the appellant by paying Rs.8 lakhs to his son Arin Anosh Mehekar. The parties are otherwise residing separately for last more than 2 years and there is no possibility of their living together in future.

7. In the circumstances, we are satisfied that the present is a fit case to waive the statutory period under Section 10A of the Act.

8. It is ordered accordingly.

9. In view of the above, the marriage between the parties solemnized on 5.6.2006 is dissolved and the parties are granted divorce by mutual consent.

10. The appeal is disposed of. A decree be drawn accordingly.

11. Both the parties shall bear their respective costs.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

