IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF MARCH, 2020

PRESENT

THE HON'BLE Mrs. JUSTICE B.V. NAGARATHNA

AND

THE HON'BLE Mr. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL No. 8991 OF 2019 (MC)

BETWEEN:

M. RAVI KUMAR
S/O. LATE MOODALAIAH
AGED ABOUT 38 YEARS
R/AT K.G. KRISHNARAJAPURA
KASABA HOBLI, NELAMANGALA TALUK
BENGALURU RURAL DISTRICT

... APPELLANT

(BY SRI YOGESH H., ADVOCATE)

AND:

SMT.YASHODAMMA
W/O. M. RAVI KUMAR
D/O. KENCHARANGAIAH
AGED ABOUT 31 YEARS
R/AT BENNAPPANA PALYA
THIPPASANDRA HOBLI
MAGADI TALUK, RAMANAGARA DISTRICT

... RESPONDENT

(BY SRI HARISH C.S., ADVOCATE)

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THIS APPEAL IS FILED UNDER SECTION 28(1) OF THE HINDU MARRIGE ACT PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 21.07.2014 PASSED BY THE SENIOR CIVIL JUDGE AND JMFC AT NELAMANGALA IN M.C.NO.24/2009 AND ALLOW THE APPEAL BY GRANTING A DECREE OF DIVORCE.

THIS APPEAL COMING ON FOR *ORDERS* THIS DAY, ***NAGARATHNA J.,*** DELIVERED THE FOLLOWING:

J U D G M E N T

The appellant is the husband while respondent is the wife. Being aggrieved by the dismissal of the petition filed under Section 13 (1)(i-b) of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act' for the sake of brevity) by the Senior Civil Judge at Nelamangala in M.C. No.24/2009 by the judgment and decree dated 21st July 2014, the husband has preferred this appeal.

2. Learned Counsel for the respective parties submitted that during the pendency of this appeal the parties have negotiated a settlement and have decided that the marriage between them may be dissolved by way of a decree of divorce on mutual consent. The petition under Section 13-B(1) of the Act has been filed and terms are set out therein. They further submitted that the stipulation under Section 13-B(2) of the Act are complied with as the parties are residing separately for 13 to 14 years and there is no possibility of reconciliation between them. Hence, they have decided to end their marriage by seeking a decree of divorce by mutual consent. They have further submitted that a joint petition is filed in this regard

by the parties. They further submitted that an application has been filed under Section 13-B (2) of the Act seeking waiver of six months period stipulated under sub-Section (2) of Section 13-B of the Act and on waiver of the said period application may be allowed and also petition under Section 13(1)(i-b) may also be allowed. In this regard they have placed reliance on the dictum of the Hon'ble Supreme Court in the case of ***Amardeep Singh v. Harveen Kaur*** reported in ***(2017)8 SCC 746***. They contended that the said application may be allowed and the appeal may be disposed in terms of the petition filed by the parties under Section 13-B(1) of the Act.

3. The parties are present before the Court. They have been identified by their respective counsel.

4. When queried by this Court, they have stated that they have agreed to seek dissolution of their marriage by a decree of divorce by mutual consent on certain conditions. Further, they stated that they have arrived at a settlement on their own volition, without there being any collusion or undue influence from any quarter. Hence, they stated that their application and petition may be allowed.

5. In the circumstances, the petition filed under Section 13-B (1) of the Act is taken on record. Perused. It is seen that it is signed by both the parties and their respective Advocates. It is accompanied by the Joint Verifying Affidavit. The petition reads as under:

> "Memorandum of Petition for Divorce by Mutual Consent Under Section 13-B (1) of the Hindu Marriage Act, 1955.
>
> The Petitioners above named humbly submits as follows:-
>
> 1. The Petitioners submit that, the petitioners got married as per Hindu rites and customs and ceremonies on 29-07-2001 at Nelamangala, Bangalore District.
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> 2. The Petitioners submit that, after the marriage the petitioners resided in the house of the parents of 1st petitioners until January 2006 when 2nd petitioner went to her parents' house.
>
> 3. The Petitioners submit that, out of the wedlock petitioners have two female children, who are at present aged about 18 years and 16 years.

4. The Petitioners submit that, the marriage between petitioners was faithful and cordial for few years except small misunderstanding, but later on owing to severe problems thereafter the marriage eventually broke down, on account of irreconcilable differences, the petitioners are residing separately and there is no cohabitation between them since 2006.

5. The Petitioners submit that, after separation, due to misunderstanding and severe problems between the petitioners, the 2nd petitioner lodged complaint against 1st petitioner in Crime No.174/2007 for offence punishable U/s.498-A, 324, 506 of I.P.C. R/w sec. 3 & 4 of D.P Act, which is still pending trial on the file of Addl Civil Judge and J.M.F.C, at Nelamangala in C.C.No.976/2007 and also filed civil suit in O.S.No.147/2007 on the file of Prl Civil Judge and J.M.F.C, at Nelamangala for maintenance which came to be decreed vide Judgement and decree dated; 01-04-2016, hence 2nd petitioner filed Execution petition for recovery of maintenance which is pending on the file of pending on the file of Prl Civil Judge and J.M.F.C, at Nelamangala in Ex.No.33/2016 and Ex.No.02/2019.

6. The Petitioners submit that, the 1st petitioner had filed petition for divorce before the Senior Civil Judge and J.M.F.C, at Nelamangala in M.C.No.24/2009, the Hon'ble court was pleased to pass Judgement and decree dt:21-07-2014 dismissing the petition filed by the 1st petitioner Under Section 13(1)(ib) of Hindu Marriage Act.

7. The Petitioners submit that, the 1st petitioner had challenged the judgement passed by Hon'ble Senior Civil Judge and J.M.F.C, at Nelamangala in the above appeal. That during the proceedings the petitioners have decided to seek divorce by mutual consent and amicably settle the dispute between them in the above appeal and also in CC.No.976/2007 (Cr.No.174/2007) for offence punishable U/s.498-A, 324, 506 of I.P.C R/w sec 3 & 4 of D.P Act, pending on the file of Addl Civil Judge and J.M.F.C, at Nelamangala and Ex.No.33/2016 and Ex.No.02/2019 pending on the file of Prl Civil Judge and J.M.F.C, at Nelamangala subject matter of OS No.147/2007 for full and final settlement.

8. The Petitioners submit that, that on account of irreconcilable differences in temperament and attitudes, the marriage between the

petitioners has irreversibly broken down and there is no possibility of reconciliation or hope of living together as husband and wife.

9. The Petitioners have agreed as follows:-

a) The petitioners withdraw all allegations made against each other before the trial court in all the above said proceedings.

b) The petitioners have no articles of each other and have exchanged all articles.

c) The 1st petitioner have agreed to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) to 2nd petitioner as full and final settlement, to which 2nd petitioner have also agreed for the said settlement.

d) On this day 1st petitioner have paid a sum of Rs.5,00,000/- by way of DD No.837358, dt:26-02-2020, drawn on Canara Bank, T. Begur Branch, Nelamangala, to 2nd petitioner before this Hon'ble Court.

e) The 1st petitioner undertakes to pay balance amount of Rs.5,00,000/- by way of DD.No.837359, dt:.26-02-2020, drawn on Canara Bank, T. Begur Branch, Nelamangala, to 2nd petitioner on the date of report of settlement as per her

undertaking to withdraw all allegation made against Appellant and his family members in CC.No.967/2007 (Cr.No.174/2007) pending on the file of Addl Civil Judge and J.M.F.C, at Nelamangala by taking necessary steps for acquittal of accused in the said case and also report settlement by withdrawing Ex.No.33/2016 & Ex.no.02/2019 pending on the file of Civil Judge and J.M.F.C, at Nelamangala which is subject matter of OS.No.147/2007 as fully satisfied and if 2nd petitioner fails to do so, as agreed above, 1st petitioner is not liable to pay balance of Rs.5,00,000/- 2nd petitioner.

f) The petitioners have no past, present or future claim against each other over the movables or immovable Properties owned and belonging to them or their family members existing to present or to be acquired in future.

g) The 2nd petitioner have no claim against 1st petitioner whatsoever including maintenance or alimony, or past, at present or in future as 2nd petitioner is receiving aforesaid amount of Rs.10,00,000/- as full and final settlement for her life and undertakes to withdraw Ex.No.33/2016 & Ex.No.02/2019 which is subject matter of

OS.No.147/2007 on the file of Prl. Civil Judge and J.M.F.C, at Nelamangala as fully satisfied.

h) Both the petitioners undertakes not to interfere in the lives of each other in future.

i) The petitioners submit that, till date 1st petitioner have took care and custody of children and now as per wish of the children, 2nd petitioner have no objection for 1st petitioner to look after them in future also and make their life good, as such 1st petitioner will be sole responsible to bear the expenses, take decision and act with best interest of children to which 2nd petitioner will not be responsible for any issues in respect of children.

10. The petitioners submit that, there has been no collusion, force, fraud or any undue influence between or upon petitioners in filing this petition.

11. The petitioners submit that, petitioners were married at Bangalore District and resided together at Bangalore District till date of separation, Hence this court has jurisdiction.

12. The petitioners submit that, the statutory court fee has been affixed on the petition.

Wherefore the petitioners humbly prays that, this Hon'ble court be pleased to pass judgement and Decree of Divorce dissolving the marriage solemnized between the petitioners in accordance with Hindu reties, customs and ceremonies on 29.07.2001 at Mahanthi Mutt, Nalamangala, Bangalore District, in the above matter, in the ends of justice and equity.

Advocate for 1st petitioner 1st petitioner

Advocate for 2nd petitioner 2nd petitioner

VERIFICATION

We, M.Ravi Kumar and Yashodamma the petitioners above named, do hereby declare and verify that, what is stated above are all true and correct to the best of our Knowledge, information and belief.

1st petitioner

2nd petitioner

Bangalore,
Date: 04.03.2020"

6. The learned Counsel for appellant submits that the husband has agreed to pay a sum of Rs.10,00,000/- (Rupees ten lakhs only). In furtherance of the same, a

demand draft bearing No.837358 dated 26.02.2020 drawn on Canara Bank, T.Begur Branch, Nelamangala in favour of the wife is being handed over to her. Learned Counsel for appellant has handed over the same to the learned Counsel for the respondent, who in turn has handed over the same to the wife, who acknowledges receipt of the same. Further, learned Counsel for appellant submits that the balance sum of Rs.5,00,000/- (Rupees five lakhs only) shall be paid to the respondent by way of Demand Draft bearing No. No.837359 dated 26.02.2020 drawn on Canara Bank, T.Begur Branch, Nelamangala in favour of the wife will be handed over to her after she withdraw the cases pending against the husband. Learned Counsel for appellant further submits that the appellant would undertake to handover the said second DD on the satisfaction of the conditions mentioned in Clause(e) of the agreement. Learned Counsel for the respondent endorses the said submission.

7. On perusal of the Joint Memo, we find that the parties have agreed to seek dissolution of their marriage by mutual consent on the aforesaid terms and conditions. Further, it is stated that owing to temperamental

differences and incompatibility, the parties are unable to reconcile their differences and cohabit together and that they have been living separately since the year 2007.

8. Further, in view of the separation between the parties for the last 13 years and having regard to the fact that the parties have agreed to seek dissolution of their marriage by mutual consent and on not being able to cohabit together, we find that the parties have made a case under Section 13-B(2) of the Act. In the circumstances, placing reliance on the dictum of the Hon'ble Supreme Court in the case of ***Amardeep Singh v. Harveen Kaur*** referred to above, we allow the application filed under Section 13-B(2) of the Act.

9. We have also perused the terms and conditions extracted above for the purpose of seeking divorce by mutual consent. On perusal of the same, we find that they are lawful. Further, we do not find any other impediment to allow the petition filed under Section 13-B(1) of the Act. In the circumstances, the petition filed under Section 13-B(1) of the Act is liable to be allowed and is allowed. The marriage between the parties solemnized on 29.07.2007 at Mahanthi Mutt, Nelamangala, Bangalore District, is

dissolved by a decree of divorce by mutual consent as per the aforesaid terms.

Office to draw decree accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

VK