

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No.5380 of 2019 (O & M)
Date of Decision: *January 11, 2021*

Tanuj Syal

..... PETITIONER(S)

VERSUS

Isha Syal

..... RESPONDENT(S)

...

CORAM: **HON'BLE MR. JUSTICE JASWANT SINGH**
 HON'BLE MR. JUSTICE SANT PARKASH

...

PRESENT: - Mr. Piyush Kant Jain, Advocate, for the petitioner.

Ms. Gargi Kumar, Advocate, for the respondent.

. . .

Sant Parkash, J

The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court.

CM No.113-CII of 2021

This is an application under Section 151 CPC filed for preponing the date of hearing in the main case; for converting the petition under Section 13(1)(a) of the Act into a petition under Section 13-B of the Act seeking dissolution of marriage between the parties by a decree of divorce with mutual consent on the basis of written settlement (Annexure A-1) by waiving off the statutory period of six months envisaged under Section 13B(2) of the Act.

In view of the contents of the application as also with the consent of counsel for the parties, the application stands disposed of and the main case is taken up for final disposal today itself.

Main Case

The present appeal filed by the appellant – husband is directed against judgment & decree dated 30.07.2019 passed by the Court of Principal Judge, Family Court, Panchkula, whereby his petition for dissolution of marriage under Section 13(1)(a) of the Hindu Marriage Act, 1955 (for short, ‘Act’) has been dismissed.

The marriage between the parties was solemnized on 30.07.2015. A matrimonial dispute arose between the parties due to temperamental differences due to which they started residing separately since 20.10.2016. No child was born from the said wedlock.

The petitioner filed a petition under Section 13(1)(a) of the Act for dissolution of marriage by a decree of divorce but the same was dismissed by the Principal Judge, Family Court, Panchkula, vide the impugned judgment which is now under challenge before this Bench.

During the pendency of the appeal, the parties have amicably settled the dispute, in regard to which, an application (CM No.113-CII of 2021) under Section 151 CPC has been filed for deciding the appeal by preponing the date of hearing in the main case by converting the petition under Section 13(1)(a) of the Act into a petition under Section 13-B of the Act seeking dissolution of marriage between the parties by a decree of divorce with mutual consent on the basis of written settlement (Annexure A-1) by waiving off the period of six months envisaged under Section 13B(2) of the Act.

Today, both the parties have come present with the plea that they have amicably settled the dispute between them and made separate statements to the following effect:-

Statement of Mr. Tanuj Syal, son of Col. Dinesh Syal, aged 35, R/o H.No. 1007, Sector 7, Panchkula.

On S.A.

“Marriage between me and respondent Isha Syal was solemnised on 30th July, 2015 as per Hindu rites at Ludhiana. From our wedlock no child was born. We have just lived together for 5½ months and ever since 20th October, 2016, myself and my wife Isha Syal are residing separately from each other. Due to matrimonial discord between us, I filed a petition for divorce in the Family Court, Panchkula which was, however, dismissed on 30th July, 2019. Against that judgment and decree, I filed an appeal before this Court i.e. FAO 5380 of 2019 which is pending. During the pendency of the said appeal, upon intervention and counselling of well wishers, we realized that we should amicably settle our matrimonial issues. Since it has not been possible for us to resume cohabitation and lived together as husband and wife so without any coercion, pressure or duress, and by our free will, we have decided to get our marriage dissolved by mutual consent. In that regard, we have executed a written agreement dated 21.12.2020, whereby all our disputes have been settled amicably and it is settled that I shall pay Rs.20,00,000/- towards full and final, past, present and future maintenance

and permanent alimony to my wife Isha Syal. Out of that amount I have already paid Rs.5 lacs vide Draft dated 16.12.2020 which has already been cleared in favour of Isha Syal. The true copy of the compromise deed (Annexure A) is Exhibit C/1. I have brought the original on which I identify my signatures and signatures of Isha Syal and also the signatures of my father Col.Dinesh Syal and Sh.Rajiv Kumar Thaman father of Isha Syal, who have signed this deed as witnesses. The copy of Draft of Rs.5 lacs already given to Isha Syal (A-2) is Exhibit C/2. I have also brought the original draft of Rs.15 lacs as balance payment as per the compromise, the photocopy of the same is produced before this Court today as Exhibit C/3. The original is being handed over to Isha Syal in Court today.

All our disputes stand fully and finally settled. Nothing is payable nor there is any claim left in respect of maintenance, alimony or istri dhan or of any other nature from Isha Syal towards me or against my parents or any other family member, relations or relative. Similarly, I or my parents have no claim against Isha Syal of any nature, whatsoever. Both of us have decided that all pending cases against each other or against any family member or initiated relating to our matrimonial discord by any of us or by any of our family member shall be withdrawn by or on the next date of hearings fixed in those proceedings/cases.

Accordingly, I pray to this Hon'ble Court to (i) to allow conversion of the aforesaid appeal/petition from Section 13(1) (a) of Hindu Marriage Act to a petition under Section 13B of the Hindu Marriage Act; (ii) the appeal FAO 5380/2019 may kindly be preponed and taken up for hearing today; (iii) I further pray that the period of six months envisaged under Section 13(2) of the Hindu Marriage Act and for adjourning it for a second motion may kindly be waived off. Myself and Isha Syal are already contesting this litigation since 2016. There is no scope of our reuniting or resuming cohabitation. We have decided to move on in our lives peacefully and progressively with chances of resettlement. Any delay in adjudicating our petition under Section 13B of Hindu Marriage Act will unnecessarily prolong the agony, which I and Isha Syal have faced due to our matrimonial discord; and it is accordingly prayed to this Court to dissolve our marriage by granting a decree of divorce by mutual consent. Having executed the aforesaid compromise and having fully and settled all our matrimonial issues including the payment of Rs.20 lacs as stated above, I and Isha Syal under aforesaid Compromise Deed, Exhibit C/1 have undertaken not to initiate any civil or criminal action arising or relating from our matrimonial dispute against each other or against any member of our respective families. The parties may be left to bear their own cost.”

Statement of Ms. Isha Syal, D/o Sh. Rajiv Kumar Thaman, resident of H.No. 200, Janta Enclave, Phase II, Urban Estate, Dugri, Ludhiana.

On S.A.

“I have heard and read over the above recorded statement of Tanju Syal. I accept the same and admit it to be correct. I have already received Rs.5,00,000/- by way of Demand Draft from Tanuj Syal, dated 16.12.2020, Exhibit C/2 at the time of execution of compromise deed dated 21.12.2020 between me and Tanuj Syal, Exhibit C/1 and I have received the balance amount of Rs.15,00,000/- by demand draft dated 8.1.2021 today in the Court from Tanuj Syal, photocopy of which has been produced as Exhibit C/3. Having received these two drafts totalling Rs.20 lacs, all my claims towards my past, present and future maintenance, permanent alimony as well as my istri dhan stand fully and finally satisfied. I have no claim whatsoever against Tanuj Syal or his parents or any of his family members, relatives or relations towards any of the aforesaid aspects. All our matrimonial disputes inter se stand settled and finished. I have undertaken that any case, petition or application filed by me against Tanuj Syal, his family members, relations or relatives relating to our matrimonial issues will be withdrawn by me by or on the next date of proceedings as the case may. Our compromise to seek dissolution of our marriage by a decree of divorce with mutual consent has been arrived at with free will without pressure, coercion or duress. I also pray that our marriage may kindly be

dissolved by granting a decree of divorce with mutual consent. The period of six months envisaged under Section 13B(2) of the Hindu Marriage Act may kindly be waived off, as we have decided to move on peacefully and progressively in our respective lives with chances of resettlements. Any delay in adjudicating our petition will only prolong the agony being faced by me due to the matrimonial disputes between me and Tanuj Syal. I undertake to remain bound by all the terms and conditions incorporated in the Compromise Deed dated 21.12.2020 Exhibit C/1. Having executed the aforesaid compromise and having fully and settled all our matrimonial issues including the payment of Rs.20 lacs as stated above, I and Tanuj Syal under aforesaid Compromise Deed, Exhibit C/1 have undertaken not to initiate any civil or criminal action arising or relating from our matrimonial dispute against each other or against any member of our respective families. The parties may be left to bear their own cost.”

As regards conversion of the petition under Section 13(1)(a) of the Act into a Petition under Section 13B of the Act, it is well settled that this Court, during the pendency of the appeal can convert the petition under Section 13 of the Act into a Petition under Section 13B of the Act. In the cases of *Smt. Krishna Kumari versus Sh. Ashwani Kumar, (1996) 114 PLR 414*, *Satinder Kumar versus Sunita, 2006(2) RCR (Civil) 192*, and *Shobha Srivastva versus T.D.Srivastva, 1998 (3) RCR (Civil) 45*, this Court has been pleased to allow such an amendment/conversion of petition under Section 13 of the Act into Petition under Section 13B of the Act, for

seeking divorce by way of mutual consent during the pendency of the appeal before this Hon'ble Court.

Taking into consideration the facts and circumstances explained in the application as also the fact that parties have amicably settled the disputes between them, to which effect their statements have been reproduced above, we deem it fit that the petition under Section 13(1) (a) of the Act be converted into a petition under Section 13B of the Act. Ordered accordingly.

Another request made in the application is with regard to waiving off the period of six months enshrined under Section 13B(2) of the Act. The Hon'ble Supreme Court in the case of ***Davinder Singh Narula versus Meenakshi Nangia, 2012(8) SCC 580, and Amardeep Singh versus Harveen Kaur, Civil Appeal No. 11158 of 2017 decided on 12.09.2017*** has held that the condition provided under Section 13B(2) of the Hindu Marriage Act, 1955 for adjourning the matter for 6 months is merely directory and the concerned court may in the exercise of its discretion and in the facts and circumstances of each case, particularly where there is no possibility of parties resuming the cohabitation and there are chances of alternative resettlement, the said period of 6 months may be waived off.

The facts of the present case are squarely covered by the ratio of law laid down in ***Davinder Singh Narula (supra)*** and ***Amardeep Singh (supra)***. After getting married in the year 2015, the parties have been residing separately since 2016 and despite the efforts, no reunion could take place. There is another fact which has weighed in the mind of the Court that no issue was born out of the wedlock and there is no possibility of parties resuming the cohabitation and there are chances of alternative resettlement.

In this view of the matter, the statutory period of six months as provided under Section 13B(2) of the Act is waived off.

In view of the aforesaid facts and keeping in view the statements of the parties made before this Court, petition under Section 13B of the Act is accepted and impugned judgment and decree dated 30.07.2019 is hereby set aside. Accordingly, marriage between the parties is dissolved by passing a decree of divorce by mutual consent. The statements of the parties and the written compromise (Annexure A-1) shall form part of the decree.

Disposed of.

(Jaswant Singh)
Judge

(Sant Parkash)
Judge

January 11, 2021

Avin/Maninder

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No