

FAO No. 164 of 2021 (O&M)

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No. 164 of 2021 (O&M)

Date of Decision: July 21, 2023

Rajwant Singh

.....Appellant

versus

Manjit Kaur

.....Respondent

**CORAM: HON'BLE MR.JUSTICE RAJ MOHAN SINGH.
HON'BLE MR.JUSTICE HARPREET SINGH BRAR.**

Present: Mr. K.S. Sidhu, Sr. Advocate with
Mr. Praagbir Singh Dhindsa, Advocate and
Mr. Kartik Bansal, Advocate
for the appellant

Ms. Prabhjot Kaur, Advocate
for the respondent

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Raj Mohan Singh, J. (Oral)

CM-10469-CII-2023

This is an application under Order 6 Rule 17 read with Section 151 CPC for amendment of the petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 to petition under Section 13-B of the Hindu Marriage Act. Both the parties have entered into an amicable settlement of dispute and have decided to part ways. It has also been decided between the parties that the husband—appellant

would pay an amount of Rs. 20,00,000/- (Rupees Twenty lacs) as full and final settlement towards all claims of the respondent-wife as well as of two children i.e. past, present and future including permanent alimony and maintenance etc. Statements of the parties were also recorded on 11.05.2023.

In view of the above, application is allowed. Petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 is ordered to be converted into a petition under Section 13-B of the Hindu Marriage Act.

Amended petition is taken on record.

CM-10476-CII-2023

This is an application for waiving off the mandatory period of six months for grant of decree of divorce from the first date of filing of the petition. Vide order of even date, petition under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 has been ordered to be converted into petition under Section 13-B of the Hindu Marriage Act. Parties have decided to part ways subject to payment of permanent alimony by the husband-appellant in the sum of Rs. 20,00,000/- to the respondent-wife towards full and final settlement of her claim as well as that of two children past, present and future including permanent alimony and maintenance etc. As per the settlement, learned counsel for the appellant has handed over three demand drafts for a total sum of Rs. 20,00,000/- bearing No. 000305 amounting to Rs. 8,00,000/- lacs, 000307 amounting to Rs. 2,00,000/- lacs and 000542 amounting to Rs. 10,00,000/- lacs. All the aforesaid three drafts have been

handed over to the respondent-wife who is present alongwith her counsel. Photocopies of these drafts have been retained on record. Registry is directed to place these photocopies of the drafts at appropriate place. Parties are living separately since 2008. The period mentioned under Section 13-B of the Hindu Marriage Act is not mandatory rather the same is directory and it is open to the Court to exercise its discretion in the facts and circumstances of each case. The Court has to see whether there is any possibility of parties resuming cohabitation or chances of alternative rehabilitation for the purpose of waiving statutory period of six months. The Hon'ble Apex Court in ***Amardeep Singh vs. Harveen Kaur, 2017(4) RCR(Civil) 608*** has observed that Section 13-B(1) of the Act relates to the jurisdiction of the Court and the petition is maintainable only if the parties are living separately for a period of one year or more and if they have not been able to live together and have agreed that the marriage be dissolved, legal process can be resorted to.

Admittedly, in the instant case, the parties are living separately since 2008, therefore, the petition is maintainable in view of requirement of Section 13-B(1) of the Act. Section 13-B(2) of the Act is procedural in nature. The discretion to waive off the period is a guided discretion for considering the interest of justice, where there is no chance of reconciliation between the parties and the parties have already separated for a longer period or contesting the proceedings in the Court of law. The compromise has been effected between the parties and the statements of the parties have also been recorded

before this Court in first motion. This Court has to consider the period for which the parties have been married, duration of their separation, duration of pending litigation and any other pending litigation between them. The compromise arrived at between the parties has to be genuine in nature and the same should take care of alimony, custody of child (if any) and any other issue between them. Evidently, the compromise in question has satisfied all the ingredients, wherein permanent alimony to the tune of Rs. 20,00,000/- is paid towards full and final settlement of the claims of the respondent including the claims of children, if any, for past, present and future. This is a conscious decision taken by the parties by settling their disputes.

Keeping in view the period of separation since 2008 and all the efforts at Mediation and Conciliation Centre having been unsuccessfully tried, the parties have found that there is no chance of any reconciliation except to part ways for which further waiting period may create agony between them. For waiving the statutory period under Section 13-B(2) of the Hindu marriage Act, following conditions are to be satisfied/fulfilled:-

- (i) the statutory period of six months specified in Section 13-B(2) of the Hindu Marriage Act in addition to the statutory period of one year under Section 13-B(1) of the Hindu Marriage Act of separation of the parties is already over before the first motion itself;
- (ii) all efforts for mediation and 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.

In view of the statements of the parties having been already recorded in the first motion, we deem it appropriate to waive off the statutory period of six months for recording second motion. Hence, the statutory period is ordered to be waived off.

Application is allowed.

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The terms and conditions of compromise are there. Since both the parties have settled their grievances and an amount of Rs. 20,00,000/- as agreed between them stands paid by way of three demand drafts today itself to the respondent. Statutory period of six months for recording second motion has also been condoned vide order of even date. Joint statement of the parties in second motion has been recorded today itself in furtherance of their intention to part ways permanently.

2. In view of the observations made by this Court in CM-10476-CII-2023, the petition under Section 13-B of the Hindu Marriage Act is allowed. The marriage between the parties is dissolved and a decree of divorce by mutual consent is ordered to be granted.

Consequently, the decree for dissolution of marriage by mutual consent be drawn.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

July 21, 2023
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No