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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-M No. 26 of 2023 (O&M)

Date of Decision: 18.10.2023

Mandeep Singh

-Appellant No.1

AND

Kawaljit Kaur

-Appellant No.2

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

Present: Mr. B.S. Baath, Advocate,
for the appellants.

RAJ MOHAN SINGH, J. (Oral)

CM-13583-CII-2023

This is an application for condonation of delay of 2480 days in filing the present appeal.

Learned counsel for the appellants submits that petition under Section 13 of the Hindu Marriage Act was filed by the parties for dissolution of marriage by decree of divorce by mutual consent. The said petition was allowed vide judgment and decree dated 18.07.2014. The minor child was ordered to remain with appellant No.2. After the aforesaid decree of divorce with mutual consent, appellant No.2 went to New Zealand on work visa. Before going to New Zealand, she was in regular touch with appellant No.1 in the best interest of minor son and

while going abroad, she handed over the custody of minor son to appellant No.1. The minor child is still in the custody of appellant No.1 who is also present in Court along with his father i.e. appellant No.1. Appellant No.2 is in New Zealand since 26.04.2023. In the best interest of the minor, the parties have reconciled and have now decided to live together for the welfare and future of the minor child. In view of this change of mind, the delay of 2480 days has occasioned in filing the present appeal. Since both the parties are on the same side i.e. appellant No.1 and 2, therefore, on 04.08.2023, this Court passed the following order:-

“Learned counsel for the applicants-appellants contends that after the judgment passed by Additional Civil Judge (Senior Division), Batala (exercising the powers of District Judge, Gurdaspur) under Section 13-B of the Hindu Marriage Act, the parties have decided to live together in the best interest of the minor. As of now, the appellant No.2 is on work visa in New Zealand.

Since, both the parties are on the same side being the appellants, therefore, before passing any order in the application under Section 5 of the Limitation Act, both the parties

are directed to be present in Court on the adjourned date.

Adjourned to 15.09.2023.

Appellant No.2 is permitted to appear through her attorney.”

Appellant No.2 was allowed to appear through her attorney.

Today, a Special Power of Attorney executed by appellant No.2 in favour of her father Sukhwinder Singh has been filed. The Power of Attorney has been duly embossed by the Consulate of India in Auckland and has been attested by the office of Deputy Commissioner, Gurdaspur. The Special Power of Attorney is taken on record. Registry is directed to tag the same at an appropriate place. The Special Power of Attorney is also present in Court and has admitted the factum of reconciliation between the parties for the betterment of minor son. In view of aforesaid, we deem it appropriate to condone the delay of 2480 days in filing the appeal.

Application stands disposed of.

Main case

The present appeal has been preferred against the judgment and decree dated 18.07.2014 passed by the Additional Civil Judge (Senior Division), Batala under Section 13-B of the Hindu Marriage Act vide which marriage between the parties

was dissolved by decree of divorce with mutual consent. The custody of the minor son was ordered to remain with Kawaljit Kaur. The minor child remained with Kawaljit Kaur till 26.04.2023. Kawaljit Kaur got a work visa in New Zealand and thereafter, she went for New Zealand. Even during the period when she remained in India, she was in regular touch with Mandeep Singh for the sake of their minor child. At the time of leaving India, she handed over the custody of minor son to Mandeep Singh. Now the parties have reconciled for the best interest of the minor child and have decided to live together. Since Kawaljit Kaur is still in New Zealand, therefore, she intends to make likely provision for the betterment of the minor child even by sponsoring their candidature for temporary residency in New Zealand and vice versa.

In order to test the bonafide of the parties, this Court vide order dated 04.08.2023 asked the parties to remain present in Court. Liberty was granted to Kawaljit Kaur to espouse her view point through a validly appointed attorney.

In pursuance of the said order, Kawaljit Kaur has appointed her father as her Special Power of Attorney. Special Power of Attorney dated 19.09.2023 has been duly embossed by the Consulate of India in Auckland and has been attested by the office of Deputy Commissioner, Gurdaspur. Special Power of Attorney has already been taken on record.

We have heard learned counsel for the appellants and Special Power of Attorney in person.

The marriage between the parties was dissolved by decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act. Appeal against the said judgment is maintainable in view of intended settlement between the parties for the benefit and in best interest of their son.

The bar created in terms of Section 96 CPC is not attracted in view of judgments of this Court in **Jyoti vs Neeraj Kumar Saini, 2019(1) RCR (Civil) 748** and **Krishna Khetarpal, Headmistress, Government Girls High School, Bhuna Tehsil Fatehabad District Hissar vs Satish Lal, 1986(2) PLR 608.**

Both the parties have pleaded that now they have reconciled the situation for the betterment of their son and have decided to live together by forgetting their past and by forgiving each other for whatever has happened between them in the past. This is so in the interest of securing better future prospects of their son. In view of aforesaid position, an onerous duty is cast upon the Court to make all endeavour for re-conciliation between the parties in order to secure future prospects of the minor child.

We are of the considered opinion that when both the parties have forgotten their past and have forgiven each other by deciding to live together for better future of the minor child, it is

never late to mend their mind set. Symbolically, the parties have decided to live together as Kawaljit Kaur is still in New Zealand, but the meeting of mind would definitely advance the cause in favour of minor child and the likely arrangement in future may yield in translating the future prospects of the minor child.

For the reasons recorded hereinabove, we deem it appropriate to set aside the judgment and decree dated 18.07.2014 passed by the Additional Civil Judge (Senior Division), Batala.

Normal consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

18.10.2023
Jyoti Sharma

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No