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

FAO No.146 of 2017 (O&M)

Date of Decision: 13.07.2023

KARAMJIT KAUR

.....Appellant

Vs

NAVTEJ SINGH

....Respondent

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

Present:Mr. Ravish Bansal, Advocate
along with the appellant/Karamjit Kaur in-person.

Mr. Chander Shekhar Singhal, Advocate for
Mr. Dhirender Chopra, Advocate
along with respondent/Navtej Singh in-person.

RAJ MOHAN SINGH, J. (Oral)

CM No.11708-CII of 2023

This is an application for placing on record
settlement/agreement dated 26.05.2023 executed between the
parties.

Learned counsel for the respondent has no objection
for placing the copy of settlement on record.

In view of above, this application is allowed. The copy
of settlement/agreement dated 26.05.2023 is taken on record,
subject to all just exceptions.

CM No.11709-CII of 2023

This is an application under Section 151 CPC read with Order 6 Rule 17 CPC for amending the nomenclature of the case from petition under Section 13 of the Hindu Marriage Act into a petition under Section 13-B of the Hindu Marriage Act for dissolution of marriage by decree of divorce by mutual consent in view of settlement/agreement dated 26.05.2023 (Annexure A-1).

Learned counsel for the respondent has no objection for amending the nomenclature of the petition under Section 13 of the Hindu Marriage Act into a petition under Section 13-B of the Hindu Marriage Act for dissolution of marriage by decree of divorce by mutual consent in view of settlement dated 26.05.2023.

In view of consensus arrived at between the parties, this application is allowed. The petition under Section 13 of the Hindu Marriage Act is ordered to be converted into a petition under Section 13-B of the Hindu Marriage Act.

CM No.11710-CII of 2023 in/and
FAO No.146 of 2017 (O&M)

[1]. This is an application under Section 151 CPC for waiving off the requirement of recording second motion statement after six months in a petition under Section 13-B of

the Hindu Marriage Act.

[2]. Evidently, the marriage between the parties was solemnized on 08.07.2002 according to Anand Karaj. The marriage was consummated and the parties cohabited together as husband and wife. Out of the wedlock, one daughter namely Sukhmandeep Kaur was born on 09.07.2003, who is presently 20 years of age. The daughter is residing with the appellant Karamjit Kaur. Due to temperamental differences number of litigation started between the parties including petition under Section 125 Cr.P.C., Crl. Complaint under Section 498-A IPC, petition under Domestic Violence Act, Civil Suit for permanent injunction and petition under Section 13 of the Hindu Marriage Act.

[3]. Respondent-Navtej Singh filed petition under Section 13 of the Hindu Marriage Act for dissolution of marriage for granting a decree of divorce on the ground of cruelty. The said petition was allowed by the District Judge, Family Court, Faridkot vide judgment and decree dated 04.10.2016 and a decree of divorce dissolving the marriage between the parties was passed.

[4]. Appellant-Karamjit Kaur filed the present appeal i.e. FAO No.146 of 2017. During pendency of the present appeal, both the parties have arrived at a compromise and a settlement

has been recorded on 26.05.2023. The terms and conditions of the said settlement have already been reiterated by the parties in their joint statement of even date separately recorded in the presence of their respective counsel, who have also signed as a token of confirmation.

[5]. In view of the terms and conditions of the settlement/agreement dated 26.05.2023, both the parties have agreed in principle to part ways. The appellant has agreed not to pursue the present appeal. Both the parties have also agreed that the appellant will file an application before this Court with a prayer to convert the appeal into a petition under Section 13-B of the Hindu Marriage Act for grant of decree of divorce with mutual consent. The total amount of Rs.10,00,000/- (Rupees Ten Lakh only) has been paid to the appellant and her daughter i.e. Rs.5,00,000/- each by means of bank drafts. The parties have also agreed that Sukhmandeep Kaur daughter of the parties along with nephew of Karamjit Kaur will visit the house of the respondent-husband, who will hand over the dowry articles consisting of iron box and other items. Admittedly, those articles have been duly returned by the respondent-husband to the appellant. The custody of the daughter Sukhmandeep Kaur will remain with Karamjit Kaur, who shall be the sole lawful guardian of Sukhmandeep Kaur for all intents and purposes.

[6]. In view of settlement arrived at between the parties, both the parties jointly pray that today's proceedings be treated to be the first motion and period of six months for recording second motion be dispensed with in the light of facts and circumstances of the case, particularly in view of the fact that the parties are living separately since the year 2005 and there are remote chances of any such reconciliation. Reunion has been negated by means of amicable settlement, wherein both the parties have agreed to part ways. By means of the present application, the parties pray for waiving off the requirement of recording second motion statement after period of six months.

[7]. Learned counsel for the parties jointly state that in view of the ratio of **Amardeep Singh vs. Harveen Kaur, 2017(4) R.C.R. (Civil) 608** the period mentioned in Section 13-B(2) 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 the 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 the statutory period of six months. The Hon'ble Apex Court has observed that the period mentioned in Section 13-B(2) of the Hindu Marriage Act is not mandatory. 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.

[8]. Admittedly, in the instant case, the parties are living separately since the year 2005, 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 the period is a guided discretion for considering the interest of justice, where there is no chance of reconciliation and the parties have already separated for a longer period or contesting proceedings in different Courts for a longer period mentioned in Section 13-B(2) of the Hindu Marriage Act. Admittedly, the number of litigations were pending between the parties and the period was exceeding the period required under Section 13-B of the Act. The 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 the issue of

alimony has been suitably answered in favour of the appellant as well for the daughter. The custody of daughter shall remain with the appellant and the appellant would be the lawful guardian of the daughter. The Court has to be satisfied that the parties are living separately for more than the statutory period and all efforts at Mediation and Conciliation Centre have been tried and have failed. On this issue also, the parties have successfully struck a balanced compromise.

[9]. Keeping in view the period of separation since the year 2005 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 for the parties in the facts and circumstances of the instant case. 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.

[10]. Since Section 13-B(2) of the Hindu Marriage Act is not mandatory, but the same is directory and the period of six months can be waived off, subject to satisfaction of the Court in the given circumstances. In the instant case, the parties have finally decided to part ways after exhausting all the efforts to reconcile, which have proved futile. The parties are living separately for the last about 18 years. After due deliberations, the parties have decided to part ways by means of mutual divorce/settlement. The marriage is broken irretrievably and therefore, cooling off period would be futile. The marriage was solemnized on 08.07.2002 as per Anand Karaj. The parties are living separately since the year 2005.

[11]. As per compromise, the appellant-wife has received all the *streedhan* as per conditions of the compromise in addition to

the permanent alimony for herself as well as for the daughter.
In view of judgment rendered in **Amit Kumar vs. Suman Beniwal, 2022 AIR (SC) 570** and **Amardeep Singh's case (supra)** indulgence can be granted in the present case. Joint statement of the parties in the presence of their respective counsel has also been recorded separately.

[12]. In view of above, statutory period of six months is ordered to be waived off. The application is allowed.

[13]. In view of above, the petition under Section 13-B of the Hindu Marriage Act, 1955 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. The earlier decree stands substituted with the consequent decree of divorce by mutual consent.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

July 13th, 2023

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No