

FAO-1557-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1557-2018 (O&M)
Date of decision: November 16, 2023

Gaurav Gupta

....Appellant

versus

Pooja Gupta

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE SUMEET GOEL

Present:- Applicant-appellant in person with Mr. Amrik Garg, Advocate.

Respondent in person with Mr. Munish Behl, Advocate.

SUDHIR SINGH, J. (ORAL)

CM-19619-CII-2023

Prayer in the present application under Section 13B (1) of the Hindu Marriage Act, 1955 read with Section 155 of the Code of Civil Procedure, 1908 is for dissolution of the marriage by a decree of divorce by mutual consent.

2. Learned counsel for the parties submit that in compliance of order dated 09.08.2023, condition No. 5(e) of the settlement dated 30.05.2023 has been complied with. They further submit that 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.28,51,000/- (Rupees Twenty Eight Lacs and Fifty One Thousand only) as full and final settlement, i.e., past, present and future including permanent alimony and maintenance etc. towards all claims of the respondent-wife as well as of their daughter. Statements of the parties were also recorded on 30.05.2023.

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

CM-19621-CII-2023

This is an application under Section 13(B)(2) of the Hindu Marriage Act, for waiving off the mandatory period of six months for grant of decree of divorce from the first date of filing of the petition.

2. Vide order of even date passed in the aforesaid application, petition under Section 13(1)(ia) 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.28,51,000/- (Rupees Twenty Eight Lacs and Fifty One Thousand only) as full and final settlement, i.e., past, present and future including permanent alimony and maintenance etc. towards all claims of the respondent-wife as well as of their daughter.

3. As per the settlement, learned counsel for the appellant has handed over one demand draft for a sum of Rs.28,24,500/- bearing No.505108, dated 16.10.2023, and a sum of Rs.26,500/- has been transferred through NEFT in the account of respondent/wife, on 23.01.2023. Aforesaid draft has been handed over to the respondent-wife who is present alongwith her counsel. Photocopies of the draft and remittance of amount of Rs.26,500/- in the account of respondent-wife have been retained on record. Registry is directed to place these photocopies of the draft and remittance at appropriate place.

4. Parties are living separately since 2013. 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.

5. Admittedly, in the instant case, the parties are living separately since 2013, 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 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 and are contesting the proceedings in the Court of law. The compromise has been effected between the parties on 30.05.2023 and the parties have also filed their separate affidavits both dated 05.08.2023 in this Court. 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), visitation rights and any other issue between them. Evidently, the compromise in question has satisfied all the ingredients, wherein permanent alimony to the tune of Rs.28,51,000/- is paid in full and final settlement towards the claims of the respondent including the claims of daughter Khushi, if any, for past, present and future. This is a conscious decision taken by the parties by settling their disputes.

6. Keeping in view the period of separation since 2013 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.

7. 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.

8. Application is allowed.

Main case (O&M)

The terms and conditions of compromise are there. Both the parties have settled their grievances and an amount of Rs.28,51,000/- as agreed between them stands paid by way of a demand draft amounting to Rs.28,24,500/- and by remitting an amount of Rs.26,500/- through NEFT in the account of the respondent. Statutory period of six months for recording second motion has also been condoned vide order of even date. Separate affidavits have been filed by the parties in furtherance of their intention to part ways permanently.

2. In view of the observations made by this Court in CM-19621-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 as per the settlement arrived at between the parties before the Mediation and Conciliation Centre of this Court on 30.05.2023. The parties are directed to abide by the terms and conditions of the settlement arrived at between them. Consequently, the decree for dissolution of marriage by mutual consent be drawn.

(SUDHIR SINGH)
JUDGE

(SUMEET GOEL)
JUDGE

November 16, 2023
Poonam Sharma/vs/mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No