

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-212-2018 (O&M)
Date of Decision: 09.03.2023

Dr. Gaurav Arora
&

..... Appellant/Petitioner(s)

Dr. Radhika and another

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Aayush Gupta, Advocate
for the appellant/petitioner.

Mr. V.K. Sandhir, Advocate
for the respondent.

LISA GILL, J.

This appeal had been filed by the appellant-husband challenging judgment and decree dated 05.05.2018, passed by learned Additional Judge, Amritsar, whereby petition under Section 13 of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), filed by him was dismissed.

It is submitted that marriage between the parties was solemnized on 19.02.1995. Two children, a daughter and a son were born out of this wedlock on 22.08.1996 and 16.02.1999, respectively. Dispute arose between the parties leading to filing of petition under Section 13 of the Act, by the appellant-husband, which was, however, dismissed on 05.05.2018.

Learned counsel for the parties submit that during pendency of this appeal, matter has been amicably resolved between the parties. Terms and conditions of the compromise have been reduced in writing. Settlement/agreement dated 24.11.2022 is available on record as R1.

Prayer on behalf of the parties for conversion of the petition to one under Section 13-B of the Act is accepted in the given factual matrix. Petition under Section 13-B of the Act, duly supported by the affidavits of both the parties is taken on record, subject to just exceptions.

Appellant and respondent no.1, duly identified by their counsel are present in Court. Both of them reiterate that matter has been amicably resolved. It is agreed that a sum of ₹1,30,00,000/- would be accepted by respondent no.1 as full and final settlement of all her claims - past, present and future including permanent alimony, maintenance etc. and parties agree to seek divorce by mutual consent. It is reiterated that terms and conditions of the settlement are detailed in para 5(a) to (j) of settlement agreement dated 24.11.2022. Terms and conditions of the settlement, it is submitted, shall be adhered to by both of them. Three post dated cheques of ₹20,00,000/-, dated 10.12.2022, ₹37,00,000/-, dated 15.01.2023 and ₹36,00,000/-, dated 06.02.2023, it is stated, were received by respondent no.1 on 30.11.2022. Respondent no.1 submits that all the three cheques have since been encashed. It is further stated that cheque no.076526, dated 21.02.2023, amounting to ₹37,00,000/-, has been received by her today. She submits that subject to encashment of this cheque, petition under Section 13-B of the Act, be allowed. Photocopy of cheque dated 21.02.2023, drawn on Central Bank of India, in favour of respondent no.1, is taken on record, subject to just exceptions. It is further informed that the issue of loan amount as mentioned in the agreement has also been settled.

Learned counsel for the parties submit that statements of the parties in respect to the settlement arrived at between them on 24.11.2022 were duly recorded before the co-ordinate Bench on 30.11.2022, therefore,

said statements be treated to be the statements of the parties at first motion.

Ordered accordingly.

Parties present in Court reiterate the terms and conditions of the settlement as well as the averments in the petition under Section 13-B of the Act. Appellant present in Court reiterates the terms and conditions of the settlement as well as his statement recorded on 30.11.2022 and states that he shall remain bound by the same. It is further submitted that he would assist in taking necessary action for quashing of pending criminal proceedings including recording of his statement/s wherever necessary. Respondent no.1 (wife) also reiterates the terms and conditions of the settlement dated 24.11.2022 as well as the contents of her statement recorded on 30.11.2022 besides the averments in the petition under Section 13-B of the Act. Both of them submit that they have been living separately since the year 2014 and there is no possibility of resumption of matrimonial ties between them despite best efforts and that there is no impediment to allow the petition under Section 13-B of the Act.

Appellant and respondent no.1 seek waiver of statutory period of six months for recording their statements at second motion as it is submitted that there is no possibility of their cohabiting together and would only prolong agony of the parties. It is submitted that parties have been living separately since 2014 and there is no possibility of resumption of matrimonial ties between them. Furthermore, there is no impediment to allow the petition under Section 13-B of the Act. In support of this assertion, reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Amardeep Singh Vs. Harveen Kaur, 2017(8) SCC 746**, wherein the Hon'ble Supreme Court has held that the Court in case of there being no hope for bringing together the

parties with parties being unable to live with each other in future, the said mandatory period can be waived off.

In the light of the above and keeping in view the judgment passed by the Hon'ble Supreme Court in ***Amardeep Singh's*** case (supra), this Court is satisfied in the light of the facts and circumstances of the present case that parties have not been able to live together since 2014 and there has been complete disruption of marital relations. With no possibility of reconciliation between them despite earnest efforts for reconciliation, marriage has broken irretrievably. Parties have genuinely settled their differences and waiting period will merely prolong their agony. Parties have thus made out a case for waiver of statutory period of six months.

Accordingly, their statements at second motion have been recorded separately today. Both the parties while reiterating their statements at first motion, submit that they have agreed to part ways on the terms and conditions as detailed in the settlement agreement dated 24.11.2022 out of their own free will and volition, without any kind of pressure, coercion or undue influence from any quarter and that they shall remain bound by the terms and conditions of said Agreement.

It is a matter of record that the parties are living separately since the year 2014 and despite earnest efforts all attempts for reconciliation and resumption of matrimonial ties have failed. There is indeed no possibility of the parties resuming matrimonial ties.

Keeping in view the facts and circumstances, judgment and decree dated 05.05.2018, passed by learned Additional Judge, Amritsar, is set aside. Petition under Section 13-B of the Hindu Marriage Act, 1955 is allowed. Marriage solemnized between the parties is dissolved by way of

mutual consent under Section 13-B of the Act. Parties shall remain bound by the terms and conditions of the settlement agreement dated 24.11.2022. Appeal is disposed of accordingly. Decree sheet be prepared accordingly.

Pending miscellaneous applications, if any, stand disposed of accordingly as well.

(LISA GILL)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

09.03.2023

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