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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 12.05.2023

+ **MAT.APP.(F.C.) 206/2019 & CM APPL. 34284/2019**

ASHWANI CHOUDHARY

..... APPELLANT

versus

PRATIBHA SINGH

..... RESPONDENT

Advocates who appeared in this case:

For the Appellant: Ms. Anita Sahni, Mr. Mahendra Vikram Singh, Dr. Rennie Joyy and Mr. Rahul Maurya, Advocates with appellant in person.

For the Respondent: Mr. Nishant Das, Advocate with respondent in person

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 06.05.2019, whereby the petition filed by the appellant seeking divorce under Section 13 (1)(ia) of the Hindu Marriage Act (hereinafter referred to as the 'Act') has been dismissed.

2. With the intervention of the Court as well as with the intervention of respective counsel for the parties, the parties have

settled their disputes and a settlement agreement dated 10.05.2023 has been executed. Certified true copy of the agreement dated 10.05.2023 has been filed alongwith an application seeking to place on record the settlement agreement. It is informed that application has been filed vide Diary No.833321 on 11.05.2023, which has been returned under objection by the Registry. Registry is directed to register the same despite the objection.

3. Parties are present in person and are also represented through counsel. Both the parties confirm that they have executed the settlement agreement dated 10.05.2023. Both the parties undertake that they shall abide by the terms and conditions of the settlement. Parties further undertake that they shall be approaching the concerned Court for dissolution of their marriage by mutual consent.

4. Original settlement agreement has been produced before us. We have perused the same and a certified true copy of the same has been filed, which is taken on record.

5. Appellant has agreed to transfer 50% of his share in flat No.191 (details of which are mentioned in the application) in favour of the respondent and Flat No.193B (details of which are mentioned in the application) in favour of the children, subject to his right of residence and right of resident of his parents upto his/their respective life time. Appellant further undertakes that he shall transfer the property in favour of the children and take out the term insurance before recording of the statement for the second motion. He further

undertakes that since some formalities are required to be undertaken with the financial institutions qua flat No.191, he assures that the same shall be completed within a period of three months from today.

6. Respondent, who is present in person, undertakes that she shall not take steps to seek eviction of the appellant or his parents from Flat No.193B, which is to be transferred in favour of the children. Since transfer of property is being made in favour of the children subject to the right of residence of the appellant and his parents during their life time, the transferee children shall be bound by the same.

7. Both parties undertake that they shall abide by the terms and conditions of the settlement.

8. The undertakings are accepted. We have also perused the terms of settlement and find the same to be lawful.

9. In view of the settlement between the parties, the impugned order dated 06.05.2019 is set aside and petition is restored to its original number on the record of the Family Court.

10. In view of the above, the oral prayer of the parties is accepted and the petition filed by the appellant under section 13 (1) of the Act is allowed to be amended and is converted into a petition under Section 13B (1) of the Act on the records of the Family Court.

11. The amended petition duly signed and supported by respective affidavits of the parties is directed to be filed before the Family Court

on 18.05.2023. Parties shall be personally present before the Family Court for recording of their respective statements under Section 13B (1) of the Act on the said date.

12. Parties further pray that in view of the fact that they are living separately since September, 2016 and been in litigation, the statutory period under section 13B (2) be waived.

13. On an application being filed, seeking waiver of the statutory period of six months, the Family Court shall take into account the fact that the parties have been living separately since 2016 and have been in litigation and resumption of cohabitation has not been possible and grant waiver of the statutory period under Section 13B (2) in accordance with law.

14. Appeal is disposed of in the above terms.

15. Dasti under signature of the Court Master.

SANJEEV SACHDEVA, J

MAY 12, 2023
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SAURABH BANERJEE, J