

S/L 2
05.9.2024
Court No.19
SD

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 2213 of 2024

Smt. Laboni Roy nee Chowdhury
Vs.
Sri Sabyasachi Roy

Mr. Debangshu Bandhu

...for the Petitioner.

Mr. Tanmoy Mukherjee

Mr. Kamal Mishra

Mr. Pratap Sanfui

Mr. Souvik Das

Mr. Raihan Ahamed

...for the Opposite Party.

The parties are husband and wife, they were referred to mediation for resolving their dispute amicably. The mediation was successful, the parties have arrived at a settlement on the terms and conditions agreed by and between them before the Mediator. The said terms of settlement have been reduced in writing, which forms part of the Mediation Report.

To give effect to one of the terms of the said settlement, the parties have jointly filed an application under Section 28 of the Special Marriage Act, 1954 for dissolution of their marriage by a decree of divorce on mutual consent before the Court of learned Additional District Judge at Baruipur being Matrimonial Suit No.914 of 2024.

Learned counsel for the parties jointly submit that the parties are living separately since the month of March, 2020 and there is no chance to salvage the marriage between them therefore they pray that the gestation period of six months for the second motion as required

under Section 28 of the said Act of 1954 may be dispensed with as under such circumstances, such dispensation is permissible. To buttress the said submission, learned counsel for the parties jointly place reliance on the decision of the Hon'ble Supreme Court in the case of ***AMIT KUMAR vs. SUMAN BENIWAL*** reported in **2021 SCC Online SC 1270**.

Heard learned counsel for the parties, perused the materials on record.

The Hon'ble Supreme Court in the case ***AIMT KUMAR (supra)*** at paragraph 27, lays down the factors be looked into to dispense with the cooling off period of six months to entertain an application for dissolution of marriage by mutual consent, the said paragraph is quoted below for ready reference:-

“27. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13B(2) of the Hindu Marriage Act, the Court would consider the following amongst other factors:-

- (i) The length of time for which the parties had been married;*
- (ii) how long the parties had stayed together as husband and wife;*
- (iii) the length of time the parties had been staying apart;*
- (iv) the length of time for which the litigation had been pending;*
- (v) whether there was any other proceedings between the parties;*
- (vi) whether there was any possibility of reconciliation;*
- (vii) whether there were any children born out of the wedlock;*
- (viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.*

The parties are admittedly living separately since March 20, 2020, therefore the requirement of waiting period of six months for the second motion as required under Section 28 of the said Act of 1954, in the facts and circumstances of the present case, should be dispensed with.

The learned Additional District Judge at Baruipur is requested to pre-pone the date of second motion of the said joint application for divorce on mutual consent, if the parties so apply.

CO 2213 of 2024 is disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswajit Basu, J.)