

26.09.2024
(D/L 10)
Ct.-19
(Susanta)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

C.O. 2661 of 2024

Sri Ajoy Singha

-Vs-

Smt. Appi Singha (nee Bhowmik)

Mr. Ramasish Mukherjee,

Ms. Sinthiya Mukherjee,

Mr. Rameswar Sinha,

Ms. Debanjana Sen,

... For the Petitioner.

Ms. Tulia Sinha,

.... For the Opposite Party.

The instant application under Article 227 of the Constitution of India is arising out of a matrimonial proceeding being *Matrimonial Suit No. 469 of 2013* pending before the learned Additional District Judge, Fast Track Court-I, Howrah.

The husband, the petitioner herein has filed the said suit for dissolution of the marriage between the parties by a decree of divorce.

The learned Trial Judge had referred the parties to mediation. The parties had arrived at a settlement in the said mediation and terms thereof were agreed upon by the parties; in pursuance thereof, the petitioner had paid a sum of Rs. 10,00,000/- (Rupees Ten lakh only) to the opposite party but the said terms could not be given effect to as the opposite party did not turn up.

The husband had approached this Court with the aforesaid allegation.

Notice of the revisional application was issued; in response to it, the opposite party has appeared.

The parties once again were sent to mediation; in the said process, further terms of settlement have been worked out.

In compliance with one of the terms of such settlement, the parties have filed a joint petition under Section 13B of the Hindu Marriage Act, 1955 for dissolution of their marriage by a decree of divorce

The said suit being *Matrimonial Suit No. 1149 of 2024* is pending before the learned District Judge, Howrah.

The learned District Judge has fixed March 27, 2025 as the date for *Second Motion* in the said suit.

Learned counsel for the parties jointly submit that the parties are living separately since 2011 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 13B of the said Act of 1955 may be dispensed with as in this factual backdrop, such dispensation is permissible.

To buttress the said submission, the 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 of **AMIT 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 2011; therefore, the requirement of the waiting period of six months for the second motion as required under Section 13B of the said Act of 1955, in the facts and circumstances of the present case, should be dispensed with.

The learned District Judge, Howrah 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.

C.O. 2661 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 copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)