

Ct. No. 13.08
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**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Civil Revisional Jurisdiction**

**C.O. 115 of 2024
Sri Narayan Chandra Saha
Vs.
Smt. Moushumi Saha**

*Mr. Sudipto Kumar Mazumder
Mr. Shubhankar Dutta*

...For the Petitioner

Affidavit-of-service on behalf of the petitioner is taken on record. In spite of service, opposite party is not represented.

Being aggrieved by the order dated 14th June, 2024 passed by the learned District Judge, Alipurduar in Matrimonial Suit No. 317 of 2023 present application under Article 227 of the Constitution of India has been preferred.

The petitioner submits that the opposite party herein is the wife of the petitioner, and they got married to each other on 30th January, 2004. It is further stated that due to unhappy situation, the petitioner and the respondent started living separately on and from 4th September, 2022. Thereafter, the parties have decided to amicably dissolve their matrimonial tie and accordingly they filed an application for mutual divorce under Section 13B of the Hindu Marriage Act on 22nd September, 2023. Thereafter, the opposite party wife did not turn up to move the said

application and as such the Court below by the impugned order was pleased to dismiss the said Matrimonial suit filed under Section 13B of the Hindu Marriage Act.

Having considered the facts and circumstances of the case I do not find any infirmity in the order impugned since it is the settled position of law that under Section 13B of the Act of 1955, the motion before the Court for hearing of the petition should also be made by both the parties. The Court will not proceed to pass any decree unless both the parties at that stage want that the marriage should be dissolved. In other words consent for mutual divorce can be withdrawn by either of the parties or by both before passing decree as such consent cannot be treated as irrevocable in nature. Accordingly, if after expiry of six months of filing of the application for mutual divorce on the specific date both parties jointly do not move the said application for mutual divorce, the Court concerned has no other alternative but to dismiss the said proceeding.

In such view of the matter, C.O. 115 of 2024 stands dismissed.

However, this order will not preclude the parties to make joint prayer before the Court below for restoration of

the said application if they so desire, before expiry of 18 months from the date of filing such application.

Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)

