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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: February 21, 2024

Navneet Kumar

....Appellant

versus

Sushila Devi

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present:- Appellant in person with
Dr. Deepak Jindal, Advocate.

Respondent (appearing through Video-Conferencing) and
Mr. Naveen Chopra, Advocate (appearing in Court).

Mr. Ravinder Bangar, Advocate for the applicant
in CM-7851-CII-2023.

SUDHIR SINGH, J. (ORAL)

CM-23687-CII-2023

Application herein is for placing on record the Special Power of Attorney executed by respondent/ wife in favour of her father, namely Jai Pal Kamia along with duly signed fresh *vakalatnama*/ Power of Attorney, executed by Special Power of Attorney-Sh. Jai Pal Kamia.

For the reasons stated in application, same is allowed, subject to all just exceptions.

CM-2516-CII-2024

Application herein is for permission to amend/ convert main appeal into a petition under Section 13-B of the Hindu Marriage Act, 1955 (for short 'Act') for grant of divorce by way of mutual consent.

2. Learned counsel for the applicant-appellant submits that parties have on their own entered into a settlement/ agreement dated 06.02.2024 (Annexure A-1).

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They have decided to part ways on the terms and conditions contained in the said settlement/agreement.

3. For the reasons stated in application, same is allowed. Main appeal is ordered to be treated as petition under Section 13-B of the Act.

Main case (O&M)

Vide judgment and decree dated 09.01.2020 passed by the learned Principal Judge, Family Court, Panchkula, the petition filed by the petitioner-husband seeking divorce under Section 13 of the Act, was dismissed.

2. Learned counsel for the petitioner submits that marriage between the parties was solemnized on 07.12.2012 according to Hindu rites and ceremonies and out of the said wedlock, one male child was born.

3. It is worth noticing that during pendency of the present petition, learned counsel for the parties had submitted that parties had already entered into a settlement/agreement dated 06.02.2024 (Annexure A-1) effected between them. The said factum has been noted in the order dated 06.02.2024.

4. The respondent-wife, who appears through video-conferencing admits the contents of the said settlement and the factum of the filing a petition under Section 13-B of the Hindu Marriage Act, for dissolution of the marriage by way of mutual consent. She further submits that she has issued Special Power of Attorney in favour of her father to take care of the litigation between the parties.

5. Both the learned counsel have filed the respective affidavits of the parties in the Court by way of CM-3550-CII-2024. Father of respondent/ wife has filed his affidavit on behalf of respondent/ wife being her Special Power of Attorney. The affidavits are taken on record.

6. From bare perusal of the record, it appears that the parties have been living separately since December 2015. Learned counsel for the parties pray for waiving off the cooling period.

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7. Considering the factum of compromise between the parties, CM-3550-CII-2024 is allowed, and the cooling/ statutory period of 06 months is hereby waived off.

8. The terms and conditions as contained in para No.6 of the settlement/agreement dated 06.04.2024 arrived at between the parties, would read as under:-

“a) The parties have concluded that Navneet Kumar and Sushila Devi will not be able to live as husband and wife and have decided to part ways by getting divorce from each other on the basis of mutual consent.

b) It has been further decided between the parties that both the parties shall file petition under Section 13B of Hindu Marriage Act for grant of divorce by mutual consent before the competent Court of jurisdiction and both the parties shall be bound to make respective statements for grant of divorce by mutual consent.

c) It has been agreed between the parties that Navneet Kumar-first party/husband shall pay a total amount of Rs.6,00,000/- (Rupees Six Lacs only) to the second party/wife Sushila Devi as permanent alimony and maintenance (past, present and future) of the second party/wife-Sushila Devi and for maintenance (past, present and future) of the minor son Kayaan. The amount of Rs.6,00,000/-(Rupees Six Lacs only) shall be full and final amount for present, past and future maintenance for the second party (wife) and their minor son and no further amount or share in property of the first party and his family shall be claimed by the second party/wife and minor son on any account from the first party (husband).

d) That the amount of Rs.6,00,000/- (Rupees Six Lacs only) shall be paid by the first party/husband to the second party/wife in instalments in the following manner:-

(i) The first instalment of Rs.3,00,000/- (Rupees Three Lacs only) shall be paid by the first party/husband by way of Demand Draft to the second party/wife in her father/Special Power of Attorney's name Jaipal Kamia before 13.02.2024. The draft shall be paid to the second party's attorney in the presence of respective Counsel.

(ii) The second instalment of Rs.1,50,000/- (Rupees One Lac and Fifty Thousand only) shall be paid by the first party/husband by way of Demand Draft to the second party/wife in her father/Special Power of Attorney's name Jaipal Kamia at the time of grant of final divorce to the second party's attorney in the presence of respective Counsel.

(iii) The third instalment of Rs.1,50,000/- (Rupees One Lac and Fifty Thousand only) shall be paid by the first party/husband by way of Demand Draft to the second party/wife in her father/Special Power of Attorney's name Jaipal Kamia at the time of final quashing of FIR No.44/2016 dated 26.07.2016 under Section 498-A, 323, 406, 506, 120-B IPC Police Station Women Cell, Panchkula District Panchkula lodged by the second party against the first party and his parents. The amount as aforesaid

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shall be paid in the shape of demand draft to the second party's attorney in the presence of respective Counsel.

(e) It has been further agreed between the parties that the quashing petition of FIR as aforesaid shall be filed by the first party and his parents before this Hon'ble Court by the earliest and the second party through her Special Power of Attorney/Father Sh. Jaipal Kamia shall give the required consent/statements whenever required before the concerned Court of Law.

(f) It has been further agreed and accepted between the parties that the minor son namely Kayaan will remain in the custody of her mother/second party Sushila Devi and the first party-Navneet Kumar shall not claim visitation right ever and also shall not claim custody of the child in the times to come. It has further been agreed that the first party-husband has given his consent for the complete custody of the minor child Kayaan in favour of the second party-wife and it is a deemed consent from the first party-husband for any visa or passport purpose for taking the minor child-Kayaan to U.K. or any other country with the second party-wife. It has further been agreed that first party-husband shall not create any hurdle or objection if the second party-wife takes the minor child-Kayaan with her to U.K. or any other country and the first party-husband further undertakes to put his signatures in the visa or any other paper/document as required by the Embassy to take the minor child-Kayaan to U.K. with the second party-wife.

(g) The second party shall vacate the second floor of the House No.490, Sector 27, Panchkula, which is exclusively owned by father of first party one day before the date of final quashing of FIR as mentioned above.

(h) That the second party through her Special Power of Attorney/Father Sh. Jaipal Kamia shall withdraw the Domestic Violence Act complaint No.188/2015 pending in District Court, Panchkula as aforesaid on the next date of hearing i.e. 20.02.2024.

(I) Both the parties have further agreed that they shall withdraw all their other respective pending cases, if any, before any Court of Law/Authority in view of the present settlement/agreement.”

9. In compliance of the terms of the aforesaid settlement, a demand draft bearing No.572715 dated 07.02.2024 for an amount of Rs.1,50,000/- had already been handed over to respondent/wife, on 16.02.2024. Today, a demand draft bearing No.572714 dated 07.02.2024 for an amount of Rs.3,00,000/- has been handed over to the counsel for respondent for its further being handed over to the respondent/ wife. Copies of the said demand drafts have been supplied, in course of hearing, and the same are taken on record. Till date, an amount of Rs.4,50,000/- has been paid to respondent/ wife, out of total amount of Rs.6,00,000/-, as agreed between them, in

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terms of settlement/ agreement dated 06.02.2024. Balance amount shall be paid, in terms of settlement/ agreement *ibid*.

10. In view of the settlement/compromise effected between the parties, present petition is allowed and the marriage between the parties shall stand dissolved by way of mutual consent. Since the divorce is being granted to the parties by way of mutual consent under Section 13-B of the Act, it goes without saying that judgment and decree dated 09.01.2020, passed by learned Principal Judge, Family Court, Panchkula, shall have no effect and the same shall stand set aside. The marriage between the parties is dissolved by a decree of divorce by way of mutual consent.

11. However, it is clarified that the parties shall remain bound by the terms and conditions of the aforesaid settlement/ compromise, which shall form part of the decree.

12. Decree sheet be drawn accordingly.

13. Pending application(s), if any, shall stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

February 21, 2024
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No