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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-4296-2022 (O&M)

Date of decision: May 27, 2024

Sunil Kumar

....Appellant

versus

Sumandeep Kaur

....Respondent

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

Present:- Appellant/husband in person with
Mr. Rohit Mittal, Advocate for applicant-appellant.

Respondent/ wife in person with
Mr. Gurjant Singh Swaich, Advocate.

SUDHIR SINGH, J. (ORAL)

CM-9069-CII-2024

Application herein is for permission to convert main appeal into a petition under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act') for grant of divorce by mutual consent, in view of compromise/ settlement dated 05.03.2024.

2. Learned counsel for the applicant-appellant submits that during pendency of the appeal, parties amicably settled the matter by way of settlement dated 05.03.2024 (Annexure A-1), and the same was placed on record by way of CM-4384-CII-2024. They have decided to part ways on the terms and conditions contained in the said settlement/compromise.

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 24.08.2022 passed by the learned Principal Judge, Family Court, Ludhiana, Camp Court Samrala, the petition filed by the petitioners seeking a decree of divorce under Section 13-B of the Act by mutual consent, was dismissed, as the respondent is stated to have resisted to record second motion statement.

2. Learned counsel for the petitioners submit that marriage between the parties was solemnized on 29.01.2015 according to Sikh rites by way of Anand Karj ceremony and out of the said wedlock, one male child was born, on 06.11.2019.

3. Learned counsel for the parties submit that during pendency of the present petition, parties had filed a petition under Section 13-B of the Act before the learned Family Court. On 11.10.2021, at the time of recording of first motion statement, compromise was effected between the parties, and separate statements were also recorded in writing. But later on, at the time of recording of second motion statement, respondent backed out, due to which, petition under Section 13-B of the Act was dismissed, on 24.08.2022, by the learned Family Court.

3.1. Learned counsel submit that during pendency of the appeal herein, parties amicably settled the matter by way of settlement dated 05.03.2024 (Annexure A-1), and the same was placed on record by way of CM-4384-CII-2024. They have decided to part ways on the terms and conditions contained in the said settlement/compromise.

4. Both the learned counsel have filed the petition under Section 13-B of the Act and joint affidavit of the parties by way of CM-10345-CII-2024. The same are taken on record.

5. From the bare perusal of the record, it appears that the parties have been living separately for more than 4 years. Learned counsel for the parties submit that first motion statement of the parties was recorded on 11.10.2021, before learned Family Court. Learned counsel for the parties pray for waiving off the cooling period.

6. Considering the factum of compromise between the parties, the cooling/ statutory period of 06 months is hereby waived off, as prayed in the aforesaid CM-9069-CII-2024.

7. The relevant of terms and conditions as contained in the settlement/compromise dated 05.03.2024 (Annexure A-1) arrived at between the parties, would read as under:-

“We both the parties have earlier entered into a settlement on 11.10.2021 on the basis of which, petition under section 13-B of Hindu Marriage Act bearing NO.0000137/2021 was filed. As per the said settlement, the following terms and conditions are being added with the consent of both the parties to the settlement : -

- 1. That as per settlement, amount from Rs.26 lakhs is enhanced to Rs.40 lakhs and out of which, amount of Rs.18,00,000/- (Rs.8,00,000/- + Rs.10,00,000/-) has already been received vide cheque No.395188 dated 13.10.2021 for amount of Rs.8 lakhs and another cheque No.395189 for amount of Rs.10 lakhs totaling Rs.18,00,000/-.*
- 2. That as per settlement, the balance amount of Rs.22 lakhs will be paid by the second party by way of demand draft before the Hon'ble Punjab and Haryana High Court, Chandigarh on the next date subject to party No.1 cooperating and consenting to FAO No.4296 of 2022 which is pending before the Hon'ble Punjab and Haryana High Court, Chandigarh for 2.4.2024. The first party will also withdraw other cases pending before any competent court of law.*
- 3. That both the parties have no objection to move an application for preponement/ early hearing of the FAO No.4296 / 2022.*
- 4. That after receipt of full payment, as agreed between the parties, party No.1 will seize all her past/ present and future maintenance against the party No.2 or her in-laws family and even minor son Aviraj Kumar's right's also stands surrender by party No.1 being natural guardian as the amount has been enhanced for the education and well being of minor Aviraj Kumar.*
- 5. Both the parties have mutually agreed that in future, will not level any sort of allegations or file any complaint/ case against*

each other and both the parties will adhere the terms and conditions of the compromise, in case, failed, the other party will pay Rs.20,00,000/- as compensation to the other party.

The final compromise dated 5.3.2024 has been prepared and signed in presence of respectable persons without any threat/ coercion/ pressure by other side.”

7.2. Learned counsel for the appellant submits that in terms of aforesaid settlement, appellant had handed over a demand draft for a sum of Rs.22 lacs in favour of the respondent, in the Court, on 13.03.2024. Relevant of the said order reads thus:-

“The applicant, who is present in Court, has brought a demand draft for a sum of Rs.22 lac in favour of the non-applicant/respondent. A copy of the same has been furnished which is taken on record.

We have interacted with the parties who are present in Court. The respondent, who is also present in person, submits that adequate provision needs to be made for the upbringing of the child. At this juncture, the applicant/appellant, who is present in Court, submits that he will pay a sum of Rs.50,000/- per annum towards the welfare, education and other expenses of the child which will be subject to revision in case of increase in expenses. He shall file an affidavit in this regard by the next date of hearing.

List on 02.04.2024.”

7.3. Learned counsel further submits that in compliance to the aforesaid order, by way of CM-5734-CII-2024, appellant filed a specific affidavit dated 20.03.2024, which is taken on record. Following has been stated in the said affidavit:-

- “1. That deponent is filing accompanying application before Hon'ble Court and is well conversant with the facts of the case.*
- 2. That with the intervention on respectable persons and relatives of the parties have arrived a settlement on dated 05.03.2024 (Annexure A-1). And in compliance of the terms and condition appellant has already handed over a draft of Rs.22,00,000/- lakhs to respondent during pendency of hearing on 13.03.2024 before the Hon'ble court photocopy enclosed alongwith application.*
- 3. That in compliance of order passed by the Hon'ble Court deponent is furnishing present Affidavit.*
- 4. That deponent will pay a sum of Rs.50,000/- per annum towards welfare, education and other expenses of his child and same will be subject to revision in case of increase in expenses.*
- 5. That content of my accompanying application my kindly be read as part and parcel of the affidavit.*

6. *That no such or similar petition has earlier been filed by the petitioner in this Hon'ble Court or in the Hon'ble Supreme Court of India."*

8. Respondent/wife is present in person in the Court. She has supported the terms of the settlement/ compromise dated 05.03.2024 arrived at between the parties and contents of aforesaid specific affidavit dated 20.03.2024, and expressed her no objection to the same.

9. In view of the settlement/compromise effected between the parties, present petition under Section 13-B of the Act is allowed. 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 the judgment and decree dated 24.08.2022, passed by learned Principal Judge, Family Court, Ludhiana, Camp Court Samrala shall have no effect, and the same stands set aside.

10. However, it is clarified that the parties shall remain bound by the terms and conditions of the aforesaid settlement/ compromise and contents of aforesaid specific affidavit dated 20.03.2024, which shall form part of the decree.

11. Decree sheet be drawn accordingly.

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

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

May 27, 2024
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No