

FAO-M-24-2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-24-2017 (O&M)

Date of decision: February 21, 2024

Sunil Kumar

....Appellant

versus

Babita

....Respondent

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

Present:- Appellant in person with
Mr. Kamal Deep Sehra, Advocate,
Mr. Pardeep Virk, Advocate and Ms. Raj Kumari, Advocate.

Respondent in person with
Mr. Viney Saini, Advocate.

SUDHIR SINGH, J. (ORAL)

CM-3491-CII-2024

Application herein is for permission to convert main appeal i.e., FAO-M-24-2017 into a petition under Section 13-B of the Hindu Marriage Act, 1955 (for short 'Act') for grant of divorce with mutual consent.

2. Learned counsel for the applicant-appellant submits that pursuant to the directions of this Court passed on 24.03.2022, parties had appeared before the Mediation and Conciliation Centre of this Court, and a settlement/compromise dated 08.04.2022 (Annexure A-1) has been arrived at between the parties. 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 23.09.2016 passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, the petition filed by the petitioner-husband seeking divorce under Section 13 of the Act, was dismissed.

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2. Learned counsel for the petitioner submits that marriage between the parties was solemnized on 14.10.1996 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, matter was referred to the Mediation and Conciliation centre from time to time, but the mediation talks between the parties failed. Thereafter, vide order dated 24.03.2022, on joint request made by learned counsel for the parties, Mr. Sachin Jain and Mr. D.R. Singla, Advocate were appointed as Mediators, who, after interacting with the parties, had sought more time for mediation between the parties. The Mediators have submitted a report dated 08.04.2022 that the matter stands settled between the parties.

4. Both the learned counsel have filed the respective affidavits of the parties in the Court by way of CM-3496-CII-2023. The same are taken on record.

5. From bare perusal of the record, it appears that the parties have been living separately since June 2013. Learned counsel for the parties pray for waiving off the cooling period.

6. Considering the factum of compromise between the parties, application i.e., CM-3496-CII-2024 is allowed, and the cooling/ statutory period of 06 months is hereby waived off.

7. The terms and conditions as contained in para No.7 of the settlement/compromise dated 08.04.2022 arrived at between the parties, would read as under:-

“(a) It is mutually agreed between the parties that they will part ways peacefully by seeking decree of divorce by mutual consent.

(b) It is mutually agreed between the parties that the First Party will pay Rs.35,00,000/-(Rupees Thirty five Lacs Only) to the Second Party as alimony for past, present and future. First Party has sort time of 5 months to pay the alimony to the Second Party at the maximum or on or before 31st August 2022. Apart from the above said amount it is further agreed that the First Party shall continue to pay a sum of Rs.20,000/- as maintenance which is already attached from the

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salary till the payment of 35,00,000/- is not paid completely. If for any reason the salary is stopped of the First Party even then he will continue to pay the amount of Rs.20,000/- till the final payment of Rs.35,00,000/-. After the said payment nothing shall be due against the First Party. The Second Party along with her son shall have no claim in the property movable or immovable after the present settlement which will be created/purchased by the First Party from today onwards. There is no dispute with regard to dowry articles which already stood settled. Furthermore there is no dispute with regard to agriculture land which was given by Late Phool Singh father of First Party who has given to his grandson Pulkit who is owner of land as per the revenue records and one house measuring 70 square yard at ambala which is joint name of grandson Pulkit s/o First Party and his cousin who is son of elder brother of First Party and First Party will not claim any right or title in the above-said properties.

(c) It has been agreed by the First Party that he will make an attempt to give whatever amount he can arrange to be paid to the Second Party on the date fixed i.e. 11.05.2022. It is mutually agreed between the parties that the residence where the Second Party staying along with her mother-in-law and her son Pulkit will have to be sold to arrange money which ultimately will be given to the Second Party as alimony. It is further agreed by the second party that she will not create any hindrance in getting the property bearing House No.2237-A, Sector-17, Huda, Jagadhri disposed of. The First Party has agreed that whatever money he will get after the disposal of the said property the amount of Rs.35,00,000/- shall be paid by way of demand draft. He has further stated that it can be into two installments or in one shot. He has further agreed that he will continue to pay Rs.20,000/- to the Second Party till the payment of alimony. The Second Party has agreed that she will vacate the residential property within one week after the receipt of entire agreed alimony of Rs.35,00,000/-.

(d) It is mutually agreed between the parties that they will withdraw all the litigations filed by both parties as below:

(a) The First Party has agreed to move an application in RSA No.1374 of 2019 and will withdraw the same qua Second Party, and son Pulkit for the array of respondent before the date fixed.

(b) Since the present appeal is pending before this Hon'ble Court, they can suffer statement to this effect that their appeal be converted into petition under Section 13 B of Hindu Marriage Act or in the alternative they may seek permission of the Court to file petition under Section 13 B for grant of divorce by mutual consent at Jagadhri after the withdrawal of present appeal.

(c) Both parties will withdraw their revision petitions pending in the Court of competent jurisdiction at Jagadhri wherein they have challenged the order granting maintenance in petition under Section 125 Cr.P.C.

(d) It is further agreed that in case there is any other pending litigation/complaint before any authority which do not find mention in the present settlement, the same shall also be

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withdrawn on or before 30.05.2022 and if need be they will appear before the authority/s.

(e) The Second Party who is in possession of the house, the owner of whom is First Party and is under mortgage with the bank will vacate that house within a week after receiving the full and final payment of alimony without any delay. She has further agreed that she will not create any disturbance in case somebody comes to see the property as it has been agreed between the parties the same has to be disposed of in order to pay her the alimony by the First Party.

(f) Both the parties have agreed that they will not defame or malinge the image of each other in the society and will live peacefully. It is further agreed that both parties will not file any fresh litigation arising out of present matrimonial discord.

(g) Both the parties undertakes that they will abide by and be bound by the agreed terms of the settlement agreement in case of breach of any of the conditions so stipulated in the settlement agreement by either of the party it will amount to contempt of Court and will have to face consequences.

(h) In case the First Party after making certain payments backs out from the compromise then in that case the amounts already paid shall stands forfeited and the Second Party shall have the remedy available to her as per law. In the same way if the Second Party after receiving certain payments backs out from the conditions of settlement she will be liable to pay double the money to the First Party and the First Party shall have the remedy as available to him under law.

(i) Both the parties will file their respective affidavits affirming the terms and conditions of the settlement, as also stating that the same have been arrived at out of their own free will and volition after fully understanding the contents thereof and there would be liable for penal action in case of breach."

8. In compliance to the terms of the aforesaid settlement, a demand draft bearing No.828343 dated 01.02.2024 (Annexure A-2) for an amount of Rs.5,00,000/- had already been handed over to respondent/wife. Today, a demand draft bearing No.828346 dated 07.02.2024 (Annexure A-3) for an amount of Rs.34,20,000/- has been handed over to counsel for respondent for further being handed over to respondent/ wife.. Copy of the said demand draft has been supplied and the same is taken on record.

9. In terms of aforesaid settlement, respondent/ wife, who is present in person in the Court, undertakes to vacate the house in question within a period of one week from today.

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10. 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 23.09.2016, passed by learned Additional District Judge, Yamuna Nagar at Jagadhri shall have no effect, and the same stands set aside.

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