

CM-2291-CII-2024
CM-2334-CII-2024
in/and FAO-M-308-2018

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-2291-CII-2024
CM-2334-CII-2024
in/and FAO-M-308-2018
Date of Decision: 12.02.2024

Lakhvinder SinghAppellant

Versus

Gagandeep KaurRespondent

CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Harjot Singh Bedi, Advocate
for the applicant/appellant-husband.

Mr. Parvinder Singh Ahluwalia, Advocate
for the respondent-wife.

SUDHIR SINGH, J. (Oral)

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1. This is an application for converting the main appeal (*FAO-M-308-2018*), which was admitted vide order dated 26.11.2018, into mutual divorce under Section 13-B of the Hindu Marriage Act, 1955.
2. Notice in the application.
3. Mr. Parvinder Singh Ahluwalia, Advocate appears and accepts notice on behalf of non-applicant/respondent. He does not raise any

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objection, if the present application is allowed and the main appeal is converted into mutual divorce under Section 13-B of the Hindu Marriage Act, 1955

4. Heard.

5. For the reasons mentioned in the application and having no objection from the counsel opposite, the same is allowed. The main appeal is ordered to be converted into a petition (**CM-2334-CII-2024**) under Section 13-B of the Act and the same is taken up on Board today itself.

FAO-M-308-2018 (O&M)

1. Vide judgment and decree dated 16.08.2018, passed by learned Additional District Judge, Sangrur, the petition filed by the husband seeking divorce under Section 13 of the Act for dissolution of marriage by way of a decree of divorce was dismissed. Being aggrieved by the dismissal of the said petition, he has challenged the same by filing the appeal.

2. It is worth noticing that during the pendency of the appeal, compromise has been effected between the parties vide compromise/settlement dated 29.12.2023, in which both the parties have amicably settled their dispute and have filed a joint petition under Section 13-B of the Act duly supported by affidavits of both the parties.

3. Learned counsel for the both sides submit that marriage between the parties was solemnized in the year 2011 according to Sikh rites and ceremonies and after marriage, the parties lived together and cohabited with each other as husband and wife. Out of the said wedlock, twin-daughters were born on 18.04.2012 and thereafter, one male child was born

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on 02.12.2015. Thereafter, due to temperamental differences between the parties, both the parties started residing separately for the last 7 years and the wife was having the custody of one daughter, whereas two children remained in the custody of the husband.

4. The terms and conditions as contained in para 8 of the settlement/compromise dated 29.12.2023 arrived at between the parties, would read as under:-

i) That party No. 1 will have the custody and responsibility of child namely Nimar Walia and Tanvir Walia and they will reside with party No. 1. Whereas, party No. 2 will have the custody and responsibility of child Simar Walia and the party No. 2 will bring and brought up Simar Walia alone and the party No. 2 will not claim anything on account of education, marriage etc. of Simar Walia from party No. 1.

ii) That party No. 1 will pay an amount of Rs. 19,00,000/- (Rupees Nineteen Lac) to the party No. 2 on account of her past, present and future maintenance as well as on account of maintenance i.e. past, present and future of Simar Walia. After receiving of said amount of Rs. 19,00,000/-, the party No. 1 will not claim any amount either on her behalf or on behalf of Simar Walia from party No. 2 ever.

iii) That as per the compromise party No. 2 does not want to pursue the above said FIR No. 243/2019, U/S 406/498-A of IPC, P.S. Sirhind, District Fatehgarh Sahib and therefore, withdraws from the prosecution of the same. The party No. 1 will file quashing petition before the Hon'ble High Court for quashing of FIR No. 243/2019, U/S 406/498-A of IPC, P.S. Sirhind, District Fatehgarh Sahib and the party No. 2 will co-operate and support the party No. 1 in quashing of above said FIR by appearing before the court of law for recording of her statement as may be directed by the Hon'ble High Court. Further, the party No. 2 has no objection if the said FIR stands quashed by the Hon'ble High Court.

iv) That the party No. 2 will withdraw petition U/S 125 Cr.P.C.

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against the party No. 1 which is pending in the Court of Principal Judge, Family Court at Fatehgarh Sahib.

v) That party No. 1 will file an application before the Hon'ble High Court in FAO-M-308-2018 for converting the said appeal into petition U/S 13-B of HMA and party No. 2 will appear in the said appeal for the dissolution.

OR

In case the said application has not been accepted by the Hon'ble High Court, then the party No. 1 will withdraw the said appeal with liberty to file the petition U/S 13-B of HMA, 1955 in the court of Principal Judge, Family Court, Fatehgarh Sahib.

vi) That in case, the application for converting the FAO-M-308-2018 into petition U/S 13-B is allowed then the above said payment of Rs. 19,00,000/- will be paid in two equal installments i.e. Rs. 9,50,000/-each. The first installment will be payable at the hearing in said FAO or Misc. application before the Hon'ble High Court and the second installment of Rs. 9,50,000/- will be given at the time of recording of statement for the quashing of above said FIR.

OR

In case the said application for conversion of appeal into petition U/S 13-B of HMA has not been accepted by the Hon'ble High Court and the parties opt to file the petition U/S 13-B of HMA, 1955 in the court of Principal Judge, Family Court, Fatehgarh Sahib. Then the first installment will be payable at the time of recording of statement of first motion in petition U/S 13-B of HMA and the second installment of Rs. 9,50,000/- will be given at the time of recording of statement of second motion in petition U/S 13-B of HMA.

vii) That as per the compromise party No. 1 does not want to pursue the above said FIR No. 294, Dated 18-12-2019, U/S 12 of Passports Act, P.S. Sirhind, District Fatehgarh Sahib and therefore, withdraws from the prosecution of the same. The party No. 2 will file quashing petition before the Hon'ble High Court for quashing of said FIR and the party No. 2 will record his statement as may be directed by the Hon'ble High Court for quashing of FIR.

viii) That entire litigation expenses of above said litigation will be

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borne by party No. 1.

ix) That none of the party will interfere in the life of each other and they will not move any application or claim anything except for enforcing the rights and duties/obligations mentioned in the present compromise.

5. In terms of the aforesaid settlement/compromise, learned counsel for the appellant had got a cheque bearing No.487898, dated 12.02.2024, amounting to Rs.9,50,000/- in the name of the respondent (Gagandeep Kaur), drawn on Punjab National Bank in Court today. Photocopy thereof has been handed over in Court today, which is taken on record, subject to all just exceptions and the balance amount is to be paid as per terms of the settlement/compromise dated 29.12.2023. Separate affidavits have been filed by the parties in furtherance of their intention to part ways permanently.

6. A joint prayer has been made on behalf of both the parties for waving off the mandatory period of six months for grant of decree of divorce as they have been residing separately for more than seven years and a settlement/compromise dated 29.12.2023 has been arrived at between them and they have decided to part ways on the terms and conditions in the said settlement/compromise.

Keeping in view the fact that both the parties have been residing separately for more than seven years and there is no chance of any reconciliation except to part ways for which further waiting period may create agony between them, the statutory period of six months is ordered to be waived off.

7. In view of the settlement/compromise effected between the

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parties, present petition under Section 13-B of the Act 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 Hindu Marriage Act, it goes without saying that the judgment and decree dated 16.08.2018, passed by learned Addl. District Judge, Sangrur shall have no effect and the same shall stand set aside.

8. 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.
9. Decree sheet be drawn accordingly.
10. Pending application(s), if any, shall stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

12.02.2024
Himani

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No