



2024:DHC:5842-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 05.08.2024+ **MAT.APP.(F.C.) 235/2024****POONAM & ANR.**

.....Appellants

Through: Mr Rajnish Mann and Mr Shubham Aggarwal, Advocates.

versus

NEMO

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****AMIT BANSAL, J. (ORAL)**

1. The present appeal is preferred against the judgment and order dated 1st June, 2024, whereby, the application preferred by the appellants, under section 13B(2) of the Hindu Marriage Act, 1955 [in short, "HMA, 1955"] for waiving the statutory period for obtaining divorce by mutual consent at the stage of second motion was dismissed. Consequently, the petition for second motion was also dismissed.

2. Appellant No.1 i.e., Ms Poonam is the wife whereas the appellant No.2 i.e., Mr Nitin Rana is the husband. The marriage between the appellants took place on 1st December, 2018 as per Hindu rites and ceremonies. One female child was born from wedlock on 10th January, 2020. Due to matrimonial differences, the appellants separated with effect

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from 1st February, 2022 and ever since have been living separately.

3. With the intervention of the family members, the appellants settled their disputes and entered into a settlement deed on 20th July, 2023.

4. In terms of the settlement, appellant No.2 agreed to pay Rs.20,00,000/- to the appellant No.1 as a full and final settlement towards permanent alimony. It was also agreed that the custody of the child shall remain with the appellant No.1.

5. The aforesaid amount was duly paid by the appellant No.2 to appellant No.1 on 23rd August, 2023.

6. In view of the settlement, the appellants approached the Family Court by means of a first motion petition, being HMA No.1100/2024 under Section 13B(1) of the HMA, 1955, seeking divorce based on mutual consent. The Family Court *via* order dated 23rd July, 2024 allowed the first motion.

7. On or about 21st May, 2024, the appellants filed the second motion petition, being HMA No.1644/2024 under Section 13B(2) of the HMA, 1955, seeking dissolution of marriage along with an application seeking waiver of the statutory period of six months for filing the second motion.

8. The application for waiver came to be dismissed *via* the impugned order. One of the factors that weighed with the Family Court in not granting the waiver was the fact that appellants had entered into a memorandum of understanding without intervention of the court and had not gone through mediation or conciliation process. Therefore, the Family Court was not satisfied that the parties had made sufficient efforts towards reconciliation.

9. Counsel appearing on behalf of the appellants submits that the

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appellant No.1 got a job offer to work in Dubai, which requires her to join on an urgent basis. Therefore, the appellants seek waiver of the statutory period of six months.

10. The present appeal came up for hearing before this bench on 26th July, 2024, when the appellants were referred for mediation to the Delhi High Court Mediation and Conciliation Centre [in short, “Mediation Centre”] to attempt a reconciliation even at this stage.

11. In the mediation proceedings, the appellants arrived at a settlement. The settlement agreement dated 2nd August, 2024, which bears the signatures of both the appellants, has been placed on record.

12. In terms of the settlement, both parties have acknowledged that there are irreconcilable differences between them and despite their best efforts, there is no scope of reconciliation. The settlement agreement also records that a sum of Rs.20,00,000/- has been paid by the appellant No.2 to appellant No.1 towards full and final settlement.

13. In **Amardeep Singh v. Harveen Kaur**, (2017) 8 SCC 746, the Supreme Court has laid down the factors to be considered for grant of waiver of the statutory period under Section 13B(2) of the HMA, 1955. The relevant extracts from the aforesaid judgement are set out below:

“19. Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:

- (i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;*
- (ii) all efforts for mediation/conciliation including efforts in*

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terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

(iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.”

14. In the present case, the parties had filed the first motion after more than three years after their date of marriage. Further, as noted above, the mediation proceedings have not been successful in reuniting the parties. The settlement agreement arrived at between the parties shows that the parties have settled all their differences with regard to alimony and child custody.

15. In these circumstances, we are of the view that adherence to statutory period of six months would only prolong their misery.

16. It is a fit case for grant of waiver of the statutory period of six months prescribed under Section 13B(2) of the HMA, 1955.

17. Accordingly, the impugned order dismissing the waiver application is set aside. Consequently, the second motion petition filed by the parties under Section 13B(2) of the HMA, 1955 shall stand revived.

18. The parties shall appear before the Family Court on 7th August, 2024 and the Family Court shall pass appropriate orders on the second motion petition.

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19. The appeal, along with pending applications, stands disposed of.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

AUGUST 5, 2024

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