

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FA(MAT) No. 90 of 2022**

- Jailal Nishad S/o Late Ishwar Nishad Aged About 32 Years R/o Village - Ambagarh Chowki, Ward No. - 10, P.S. And Tahsil - Ambagarh Chowki, District : Rajnandgaon, Chhattisgarh

**---- Appellant****Versus**

- Smt. Soniya Nishad W/o Jailal Nishad Aged About 26 Years R/o Care Of Mother Smt. Ratna Bai Nishad, Village - Tekuwa, Post Office P.S. - Somni, District : Rajnandgaon, Chhattisgarh

**---- Respondent**

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For Appellant	: Shri Shobhit Koshta, Advocate
For Respondent	: Shri Vaibhav Dhar Diwan, Advocate

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**Hon'ble Shri Justice Goutam Bhaduri &****Hon'ble Shri Justice Radhakishan Agrawal****Order On Board****Per Goutam Bhaduri, J.****19/10/2022**

1. Heard.
2. The instant appeal is against the judgment and decree dated 30.03.2022 passed by the Judge, Family Court, Rajnandgaon, district Rajnandgaon in Civil suit No. 7A/2019 whereby the application preferred by the husband for dissolution of marriage by decree of divorce was dismissed.
3. The marriage between the parties took place on 12.05.2016, thereafter they could not go long so as to continue with the marital relationship and eventually an application for divorce was filed by the husband which was dismissed.

4. The appeal having been filed before this court, the parties were sent for mediation. It has been submitted before this court that during mediation both the parties have agreed to part their ways and accordingly have filed application under Section 13 (b) of the Hindu Marriage Act for decree of divorce along with the application to waive the cooling-off period of six months.

5. Both the appellant/husband and respondent/wife who are present in person before this Court have agreed that they have mutually decided to part their ways as they are living separately since 18.07.2016. It has been further submitted by the parties that as agreed during the mediation, amount of Rs. 10,000/- and items received during the marriage has also been handed over to the wife by the husband. The wife stated that she has received the amount of Rs. 10,000/- and the items. It has been further stated that amount of Rs. 2,00,000/- has been agreed during the divorce and draft is also kept which would be paid as per settlement. The amount of Rs. 2,00,000/- by way of draft bearing No. 484688 dated 13.10.2022 is being handed over to the wife. It has been stated that in connection with Crime Number 23/2018 wherein the husband sustained conviction under Section 509 (B) IPC and Section 67 (A) of the Information Technology Act is pending before the learned Sessions Court, Rajnandgaon and it has been agreed between the parties that an application under Section 320 Cr.P.C would be filed to compound the case.

6. We have perused the application under Section 13 (b) of the Hindu Marriage Act and the application also for counselling of the case.

7. It is not in dispute that the parties are living separately since 18.07.2016 and both the parties unequivocally submit before the court that the chances of reconciliation do not exist. The application under Section 13(b) of the Hindu Marriage Act has been filed before this Court on

12.10.2022 along with the application to waive the cooling-off period of six months which is supported by an affidavit. In this context, the text of section 13-B of the Hindu Marriage Act would be relevant here and quoted below:

“13-B. Divorce by mutual consent.-- (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the period is not withdrawn in the meantime, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the divorce.”

8. The Supreme Court in a case law reported in **(2017) 7 SCC page 746-Amardeep Singh Vs. Harveen Kaur** has held that in the year 1976, the concept of divorce by mutual consent was introduced and however, section 13-B(2) contains a bar to divorce being granted before six months of time elapsing after filing to the divorce petition by mutual consent only if there is no chance for reconciliation. The Supreme Court has further laid down the following principles at para 19:

“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 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.”

9. Applying the aforesaid principle to the above case, the parties have stated that after the marriage took place they could not go along with each other and eventually have parted their ways and are residing separately and during mediation the parties have mutually agreed to dissolve their marriage by a decree of divorce and part of settlement has already been complied with as before this Court an amount of Rs. 2,00,000/- by way of draft is given and wife further admits to have received Rs. 10,000/- and items which were given during marriage. As a natural consequence it would show that the parties have acted upon their agreement to dissolve the marriage and have come to a firm opinion and arrived to a settlement that they cannot stay together and want divorce. Having stated so it further fortifies the intention of the parties to get separated and the waiting period would only prolong their

agony.

10. Under the circumstances, the waiver of cooling of the period of six months is allowed in the backdrop of the fact that the parties are residing separately for quite long and since both the parties have consented for mutual divorce, the application under Section 13(b) of the Hindu Marriage Act 1955 is allowed in the terms of settlement. Accordingly it is ordered that the marriage in between the parties solemnized on 12.05.2016 shall stand dissolved by decree of divorce henceforth. The terms of settlement arrived at during the mediation would be the part of the decree so as to enable the parties to comply the terms of compromise as mentioned at para 3 of the settlement with regard to closure of criminal proceedings.

Sd/-

(Goutam Bhaduri)  
Judge

Sd/-

(Radhakishan Agrawal)  
Judge