

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2021

PRESENT

THE HON'BLE MRS. JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MRS. JUSTICE M.G. UMA

MISCELLANEOUS FIRST APPEAL No.9558 OF 2018 (FC)

BETWEEN:

MR. VINEETH BYRASHETTAR
SON OF LATE RAMALINGAPPA
AGED ABOUT 34 YEARS
PRINCIPAL PROGRAMME MANAGER
SYMANTEC CORPORATION
900 CORPORATE POINTE, CULVER CITY
CALIFORNIA - 90230., U.S.A.
R/AT 12704, APT C TRURO AVE
HAWTHORNE, CALIFORNIA - 90250., U.S.A.

... APPELLANT

(BY SRI: C.S. HIEMATH, ADVOCATE (PH))

AND:

SMT. ASHWINI GOUD N.J.
WIFE OF VINEETH BYRASHETTAR
AGED ABOUT 28 YEARS
ENGINEER
RESIDING AT S.S. LAYOUT, 'A' BLOCK
JAMBUKESHWAR KRUPA
NO.2460/89, 10TH CROSS
DAVANAGERE - 577 005.

... RESPONDENT

(BY SRI: SURESH S. LOKRE, ADVOCATE (PH))

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF THE FAMILY COURTS ACT, AGAINST THE JUDGMENT AND DECREE DATED:23.10.2018 PASSED IN M.C.NO.46 OF 2018 ON THE FILE OF THE JUDGE, FAMILY COURT, DAVANAGERE, ALLOWING THE PETITION FILED UNDER SECTION 13(1)(ia) OF THE HINDU MARRIAGE ACT.

THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR ADMISSION THIS DAY, **M.G.UMA J.**, DELIVERED THE FOLLOWING:-

J U D G M E N T

This appeal is filed by the appellant-husband assailing the judgment and decree dated 23/10/2018 passed in M.C.No.46 of 2018 by the Family Court at Davanagere.

2. The respondent-wife had filed the petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act", for the sake of brevity), seeking dissolution of marriage by a decree of divorce on the ground of cruelty.

3. By the judgment and decree dated 23/10/2018, the Family Court allowed the said petition

directing the appellant herein to pay a sum of Rs.10,00,000/- (Rupees ten lakhs only) to the respondent-wife towards permanent alimony. Being aggrieved, the appellant-husband has preferred this appeal.

4. We have heard Sri.C.S.Hiremath, learned counsel for the appellant and Sri.Suresh S.Lokre, learned counsel for the respondent.

5. They submitted that in this appeal the parties have filed a petition under Section 13-B(1) of the Act read with Section 151 of Civil Procedure Code, 1908 setting out the terms for arriving at a settlement between themselves. The same may be considered and the appeal may be disposed of in terms of the petition filed under Section 13-B(1) of the Act. They also submitted that an application under Section 13-B(2) of the Act has been filed. The purpose of filing the said application is to waive off the period of six months as stipulated under the said provision having regard to the dictum of the Hon'ble Supreme Court

in the case of ***Amardeep Singh vs. Harveen Kaur [(2017)8 SCC 746]***.

6. They submitted that the parties were married on 09/02/2015, but they have not been residing together since the year 2017 and there is no possibility of a reconciliation or cohabitation between the parties.

7. The parties are also present before this Court. They have been identified by their respective counsel. When queried by this Court, they stated that they have indeed agreed to seek dissolution of their marriage by a decree of divorce by mutual consent. They further stated that they have arrived at a settlement on their own volition without there being any coercion, undue influence from any side. The parties have agreed to abide by the terms of the settlement.

8. Learned counsel for appellant-husband submitted that a sum of Rs.5,00,000/- is deposited before this Court and the respondent may be permitted to

withdraw the same. He further submitted that a sum of Rs.5,00,000/- is being paid by Demand Draft bearing No.462930 dated 28/01/2021 drawn on Bank of Baroda, Davanagere Branch and the same is being handed over to the respondent. Learned counsel for respondent accepts receipt of the same on behalf of the respondent.

9. The terms of the settlement as narrated in the petition filed under Section 13B of the Act is taken on record and into consideration. It is signed by both the parties and their respective counsel. The terms of the petition filed under Section 13-B of the Act, read as under:

**"PETITION UNDER SECTION 13-B OF
THE HINDU MARRIAGE ACT READ WITH
SECTION 151 OF CPC.**

The appellant and the respondent state as follows:

1. The appellant and the respondent were married on 09/02/2015 at Bakkeshwara Kalyana Mantapa, Davanagere, as per Hindu rites and

customs. The said marriage was registered before the Sub-Registrar, Davanagere, on 11/02/2015 vide Marriage Certificate No.DVG-MH 1577-2014-15 and the marriage between the appellant and respondent was an arranged marriage.

2. The parties to this appeal submit that due to various differences between the appellant and the respondent they have been living separately from 17/11/2016 when the respondent returned to India as she was not co-habited and the marriage was not consummated and due to various reasons of discord between the parties.

3. The respondent after returning to India had lodged a police complaint on 19/12/2017 and the case was registered against the appellant in Crime No.185/2017. The respondent has also filed another criminal complaint under the D.P. Act in Crime No.25/2018 lodged on 07/02/2018, presently numbered as C.C.No.1183/2018 in Prl. Senior Civil Judge and CJM, Davanagere Court. Due to the continuing discord within the appellant and the respondent, the respondent had filed a

divorce Petition in M.C.No.46/2018, which came to be decreed granting the Divorce along with permanent alimony of Rs.10,00,000/- (Rupees Ten Lakhs only) on 23/10/2018. The above appeal filed in M.F.A.No.9558/2018 by the appellant challenging the decree of Divorce granted by the Family Court at Davanagere, in M.C.No.46/2018 dated 23.10.2018. Another complaint in Crime No.185/2017 was closed after investigation by a 'B' Report by the Davanagere Police.

4. The appellant has challenged the issuance of process by filing a Criminal Petition under Section 482 before the Hon'ble High Court of Karnataka, in Criminal Petition No.3565/2018.

5. The appellant submits that after having complied with the conditional order of Stay granted by this Hon'ble Court, the above appeal came to be listed for admission.

6. The parties submit that they have willingly and voluntarily approached each other through their Counsels and due to the various differences between the parties, the parties have insisted and agreed that there is no point

in continuing the marital relationship any more. More so, when the appellant and the respondent have been wilfully living separately ever since 27/01/2017 and there is no any continuity of marital relationship despite several efforts of family members and well wishers of the appellant and the respondent.

7. Both the parties have declared that there are no children born from this wed lock and both the parties desire to obtain mutual divorce of their marriage held on 09/02/2015 at Bakkeshwara Kalyana Mantapa, Davanagere, as per Hindu rites and customs, which was subsequently registered before the Sub-Registrar, Davanagere, on 11/02/2015 vide Marriage Certificate No.DVG-HM 1577-2014-15.

8. Both the parties agree that they do not desire to continue the marital relationship in pursuance of the mutually agreed terms, the appellant has agreed to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the respondent as permanent alimony/maintenance and the respondent has agreed to receive the said amount of Rs.10,00,000/- (Rupees Ten Lakhs only) in terms of this Compromise Petition

as permanent alimony/maintenance from the appellant.

9. Accordingly, the appellant has made payment of a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the respondent in the following manner:

a) The appellant has No Objection for the respondent to withdraw the sum of Rs.5,00,000/- (Rupees Five Lakhs only) which has been deposited before this Hon'ble Court as per order dated 19.12.2018.

b) Balance amount of Rs.5,00,000/- (Rupees Five Lakhs only) by a Demand Draft drawn on Bank of Baroda in favour of the respondent dated 28/01/2021 No.462930577012006 by giving the same in the hands of the respondent Smt.Ashwini Goud. N.J. in the presence of the Hon'ble Court.

10. That upon receipt of the said amount of Rs.10,00,000/- (Rupees Ten Lakhs only), the respondent or her family members have no other claims against the appellant and his family and likewise, the appellant shall not have no other claims as against the respondent.

11. *Both the parties agree that upon grant of a decree of divorce in this petition, they shall not interfere in each other's life in any manner what-so-ever.*

12. *It is agreed by the respondent that in pursuance of the above compromise, the respondent and her family do not press for any of the charges as filed in Crime No.185/2017 dated 19.12.2017 under Sections 420, 504 r/w Section 34 of the IPC and also the respondent and her family would not press the charges in the Criminal Case filed in the Complaint filed and registered as Crime No.25/2018 on 07.02.2018 for the offences alleged under Sections 498(a), 504, 114 r/w Section 34 of IPC and 3 and 4 of DP Act and accordingly the respondent would withdraw all her complaints filed against the appellant in view of this Decree obtained for Mutual Divorce.*

13. *Both the parties agreed that the respondent has withdrawn the Appeal filed in MFA No.680/2019 without any claim for enhancing the alimony awarded in*

M.C.No.46/2018, by the Family Court, Davanagere, by a Decree and Judgment. Both the parties agree that they shall not proceed to file any further case against each other now or in future and question the terms of this Settlement and receipt of payment and thereby both the parties agree that all pending cases shall stand closed and they shall not institute any other case on the grounds of domestic abuse, dowry harassment, cheating, alimony/maintenance etc.

14. Both the parties agree that the decree of Divorce obtained by the respondent dated 23/10/2018 shall stand modified without any claim for costs or any other reliefs.

15. Both the parties agree that they have entered into terms of Settlement under this Mutual Divorce petition voluntarily and wilfully and since their marriage is irretrievably broken down and there are no chances of re-union.

16. The appellant/appellant and the respondent have decided to get their marriage

dissolved by a decree of Divorce on the aforesaid terms.

17. In pursuance of the above, both the parties agree not to interfere with each other's life in any manner what-so-ever, and the parties agree that they are at liberty to re-marry.

18. Both the parties agree that in view of the Compromise, both the parties withdraw all the allegations made against each other.

WHEREFORE, the appellant and the respondent pray that this Hon'ble Court may be pleased to allow the above petition and order a decree of Divorce of the marriage of the appellant/appellant and the respondent held on 09/02/2015 at Bakkeshwara Kalyana Mantapa, Davanagere, in the above case, in the interest of justice and equity.

Sd/-

Advocate for Appellant

Sd/-

Appellant

Sd/-

Advocate for respondent

Sd/-

Respondent"

10. We have perused the terms of the settlement. The parties have stated that there is no cohabitation between them and they are residing separately ever since 27/01/2017. We find there is no chance of re-conciliation. Therefore, in view of the settlement arrived at between the parties, the marriage could be dissolved by mutual consent.

11. Since the parties have lived apart since 2017, we find that it is a fit case where the conditions stipulated under sub Section (2) of Section 13-B of the Act could be waived having regard to the judgment of the Hon'ble Supreme Court in the case of ***Amardeep Singh Vs Harveen Kaur [(2017) 8 SCC 746]***. Therefore, the minimum period of six months stipulated under Section 13-B(2) of the Act is waived. The application filed in that regard is disposed of.

12. The terms of settlement entered into between the parties are legal and acceptable. Accordingly, the said

terms are accepted. The appeal is liable to be disposed of in terms of the settlement.

13. In the result, the appeal is ***disposed***. The judgment and decree dated 23/10/2018 passed in M.C.No.46 of 2018 by the Family Court at Davanagere is substituted by this judgment.

The marriage between the parties solemnized on 09/02/2015 at Bakkeshwara Kalyana Mantapa, Davanagere, which was registered before the Office of the Sub Registrar, Davanagere on 11/02/2015 under Marriage Certificate Number.DVG-HM1577/2014-15 is dissolved by a decree of divorce by mutual consent.

Registry to permit the respondent to withdraw a sum of Rs.5,00,000/- (Rupees five lakhs only) deposited by the appellant - husband before this Court and to release the same forthwith.

Registry to draw up a decree in terms of this judgment.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

*bgn/-