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

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Judgment delivered on : 29.03.2023

+ MAT.APP.(F.C.) 74/2023 & CM APPL. 12518/2023

SUNIL KUMAR MOURYA & ANR.

..... Appellants

versus

NEMO

..... Respondent

Advocates who appeared in this case:

For the Appellant: Mr. M.S. Jadhav, Advocate with appellants in person.

For the Respondent: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. This is an appeal preferred by both the husband and wife as appellants impugning order dated 23.01.2023. It was pronounced on 20.01.2023. On page one of the order, date 23.01.2023 is mentioned and on the last page, just below the signatures, the date 20.01.2023 is

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mentioned. However, as per the proceedings sheet recorded as a separate order, the application of the appellants has been dismissed on 20.01.2023.

2. Both parties are present in person, represented by counsel and they produced the following Identity Cards:



3. Appellants are aggrieved by the rejection of their application

seeking waiver of the stipulated period of six months under Section 13-B(2) of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act).

4. Parties were married on 04.08.2005 and on account of their differences, separated on 10.07.2020. Thereafter the proceedings under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the DV Act) was filed by the wife in September, 2020. There are two children born from the wedlock.

5. The parties have entered into a settlement vide compromise deed dated 15.02.2022 deciding to end their marriage by mutual consent. In view of the settlement between the parties recorded on 15.05.2022, the proceedings under the DV Act were withdrawn on 25.03.2023.

6. On account of their irreconcilable differences, parties moved the petition for grant of divorce by mutual consent under Section 13-B of the Act. Said petition dated 09.12.2022 was allowed on 22.11.2022 and first motion of divorce was granted.

7. Parties thereafter could not reconcile their differences and accordingly approached the Family Court and filed the subject application on 09.12.2022 seeking waiver of the stipulated period of six months.

8. One of the grounds mentioned was that appellant no. 1 (husband) is an international athlete and represents India and has to travel abroad for international championship and because of the pendency of these proceedings his travel abroad is hampered.

9. The parties are present in Court in person.

10. We have interacted with the parties and they still confirm that their differences are irreconcilable and there is no possibility of reunification of the family.

11. In the impugned order, the Family Court has dismissed the application only on the ground that parties have lived together for about 15 years and there may be possibility of reconciliation. The Family Court while referring to the judgments of the Supreme Court on the aspect of waiver of the statutory period has not even considered or opined as to why the waiver is not to be granted in the facts and circumstances of the case except to only opine that because of a fifteen years marriage, there may be possibility of reconciliation.

12. Parties have expressed their desire to end their relationship and do not wish to continue the prolonged sufferings.

13. The Family Court has erred in not noticing that from the date of entering into the settlement deciding to end their marriage by mutual consent over six months had elapsed by the time the second motion

petition was filed. Said factor was relevant and should have been taken into account by the Family Court while considering the application for waiver. The period of waiver stipulated under Section 13-B(2) of the Act is to enable the parties to have a re-think and in view of the legislature, six months' time is sufficient for the parties to have a re-think in so far as grant of divorce by mutual consent is concerned. Taking the date from the settlement agreement dated 15.05.2022 over six months have already elapsed.

14. Keeping in view the facts and circumstances of the case as also the interaction with the parties, we are of the view that any delay in dissolving their marriage is going to prolong their sufferings and thus it would be in the interest of justice to end the sufferings as early as possible. Even otherwise from the grant of the first motion over four months have already elapsed and over ten months have elapsed from the agreement of the parties to end their marriage by mutual consent and as such we are of the view that the impugned order dated 20.01.2023 rejecting their application for grant of waiver of the stipulated period is not sustainable. The same is accordingly set aside. We grant waiver of the remaining period stipulated under Section 13-B(2) of the Act.

15. Parties shall appear before the Family Court for recording of the statement and further proceedings on the second motion petition on 10.04.2023.

16. The appeal is allowed in the above terms.
17. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

VIKAS MAHAJAN, J

MARCH 29, 2023

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