

Court No. - 1

Case :- FIRST APPEAL No. - 170 of 2023

Appellant :- Eti Tyagi

Respondent :- Prince Tyagi

Counsel for Appellant :- Atul Dixit

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

Oral

1. Shri Vishwakant Srivastava, Advocate, has filed his Vakalatnama on behalf of respondent, which is taken on record.

2. Heard learned Counsel for the appellant and learned Counsel for the respondent.

3. This appeal filed under Section 19(1) of Family Court Act, 1984 has arisen out of the judgement/order dated 27.07.2013 passed by Family Court in Family Dispute No.1524 of 2023 whereby the first motion of the parties under Section 13-B of Hindu Marriage Act for dissolution of marriage initiated on 29.04.2023 accompanied with an application i.e. C-12 for waiver of cooling-off period was rejected. The proceedings had been instituted after a period of more than one year since when the parties lived separately and had arrived at an amicable settlement on 28.04.2023 to part ways due to irretrievable breakdown of marriage.

4. Both the parties were present before the Family Court and this fact is not disputed. The learned Family Court having regard to the statutory mandate was not impressed by the argument-built on the premise of judgment reported in **2023 Live Law (SC) 375 : Shilpa Sailesh Vs. Varun Shreenivasan** for the reason that Hon'ble the Apex Court in the said judgment had merely dealt with the scope of Article 142(1) of the Constitution of India. The Hon'ble Apex Court had granted the decree of divorce in the light of powers under Article 142(1) of the Constitution of India. To this extent we do not find any illegality in the order passed by the Family Court.

5. The case before us is a case of two parties having amicably settled their matrimonial dispute through 'Memorandum of Understanding' (hereinafter referred to as 'MOU') on 28.04.2023. The parties had chosen to part ways in a situation where marital relationship had turned completely irretrievable. The parties have also acted upon the MOU. Both the parties are educated and employed.

6. This Court may note that legitimacy or otherwise of an MOU arrived at between the parties out of their free will is not open to judicial scrutiny except on the ground of fraud. The very idea of settlement through mediation or amicable means runs and progresses through this realm of philosophy. The Family Court in the present case had of course not gone into legality of MOU being undisputed, but had rather refrained from exercising the power by virtue of the bar under Section 13-B of the Hindu Marriage Act. The mandate of the statute remains procedural. The substantive right of the two parties to settle the conflict by an amicable settlement in a case where the settlement so arrived is free, the law must honour such a right. The amicable means of settlement serve the object of justice which the law fails to deliver between the parties at times giving rise to exceptional situations. This object of all amicable settlements is bound to be respected and recognized by the courts of law in all such cases where the MOU remains unquestionable and the parties have acted upon freely in the pursuit of Article 21 of the Constitution of India to live with dignity.

7. The Hon'ble Apex Court in the case of ***Amit Kumar Vs. Suman Beniwal*** reported in ***2021 SCC Online 1270*** has though observed that the institution of marriage is to be saved by preventing hasty dissolution of marriage, but at the same time once the parties have separated and separation has continued on account of the irretrievable breakdown, in such a situation the Apex Court taking the aid of ***Naveen Kohli Vs. Neelu Kohli (2006) 4 SCC 558*** has also opined otherwise. The parties to a marriage if allowed to litigate would also not achieve the purpose of law and would thus damage the institution of marriage in equal measure. It is for this reason that an amicable settlement deserves to be recognized in

law with promptitude.

8. Both the parties before us have submitted that the MOU arrived at on 28.04.2023 has been acted upon and there is no issue out of the wedlock. Both the parties are educated and have parted ways out of their free will and looking to the irreparable situation which has made the marriage unworkable, to allow the proceedings linger on, in such a case, would amount to defeat the purpose of MOU and distance the parties from the succour of justice. It is in the peculiar circumstances of the case, we hereby set aside the impugned order passed by the Family Court and remit the matter for being decided afresh. The period of six months which remains short of about two months now deserves to be waived off and the application 12-C is accordingly allowed. The Family Court is hereby directed to finalize the proceedings under Section 13-B not later than two weeks from the date a certified copy of this order is filed.

9. With the aforesaid observation, the instant appeal is **disposed of.**

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 29.8.2023

Anand Sri./-