



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 718/2022

Smt. Rekha Kumari

----Appellant

Versus

Hemendra Choudhary @ Hemraj

----Respondent



For Appellant(s) : Mr. Vishan Das.
For Respondent(s) : Mr. Kunal Bishnoi.

**HON'BLE MR. JUSTICE SANDEEP MEHTA
HON'BLE MR. JUSTICE FARJAND ALI**

JUDGMENT

04/08/2022

The instant misc. appeal has been filed by the appellant Smt. Rekha Kumari for assailing the judgment-cum-decree dated 09.11.2021 passed by the Judge, Family Court (Additional District and Sessions Judge), Gulabpura, District Bhilwara in Civil Misc. Case No.39/2021 whereby, the application preferred by the appellant and respondent under Section 13B of the Hindu Marriage Act seeking decree of divorce by mutual consent was dismissed.

On the previous date of hearing, we had directed the Superintendent of Police, Bhilwara to get an enquiry conducted to find out as to whether the appellant had made any application seeking Government employment under the 'Divorcee category'. The Superintendent of Police, Bhilwara has forwarded a report dated 03.08.2022 as per which, the appellant Rekha Kumari was



appointed as *Panchayat Sahayak* in the year 2017. She has not procured any Government employment in the 'Divorcee category'. Presently, she is posted in the Government Senior Secondary School, Tokarwad, Tehsil Hurda, District Bhilwara.

Learned counsel Shri Vishan Das representing the appellant and Shri Kunal Bishnoi, learned counsel representing the respondent, urged that the learned Judge, Family Court was totally unjustified in rejecting the application preferred by the parties under Section 13B of the Hindu Marriage Act with the observation that the very fact of their marriage was under a cloud of doubt. They urged that there was a specific averment of the parties in the divorce application that they were married by following the Hindu rites and rituals in the year 2007. Photographs of the marriage ceremony were also annexed with the application. They thus urged that the conjectural view taken by the learned Judge, Family Court that the divorce application had been filed so as to procure a decree of divorce for facilitating the path of the appellant in procuring Government employment under 'Divorcee category', is absolutely unjustified.

We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment-cum-decree and the material available on record.

We feel that the observations made by the learned Judge, Family Court in the impugned judgment-cum-decree dated 09.11.2021 that the parties could not prove the factum of their marriage as per Hindu rites and rituals and thus, they were not entitled to a decree of divorce, is absolutely unjustified and hypothetical. Pertinent affidavits were filed by the appellant and



the respondent in support of the pleadings of the divorce application that they were married to each other in the year 2007. Photographs of the marriage ceremony were also annexed with the divorce application. True it is that the exact date of marriage was not mentioned in the divorce application but for that reason alone, the divorce application could not have been thrown out. If the learned Judge, Family Court was of the view that the averments as made in the application on the aspect of marriage were inconclusive, powers under Section 165 of the Indian Evidence Act should have been exercised to put court questions to the appellant and the respondent so as to verify the truthfulness of the averments made in the application. The shypothetical view taken by the learned Judge, Family Court that the decree of divorce by mutual consent might be misused by the appellant for procuring the Government employment, is also unsustainable in view of the report dated 03.08.2022 procured from the Superintendent of Police, Bhilwara.

In wake of the discussion made herein above, the impugned judgment-cum-decree dated 09.11.2021 passed by the Judge, Family Court (Additional District and Sessions Judge), Gulabpura, District Bhilwara in Civil Misc. Case No.39/2021 cannot be sustained and is hereby quashed and set aside. The marriage of the appellant and the respondent is dissolved by mutual consent.

The appeal is allowed in these terms. Decree be prepared accordingly.

(FARJAND ALI),J

(SANDEEP MEHTA),J

41-Tikam Daiya/-