



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2023

PRESENT

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

MISCELLANEOUS FIRST APPEAL NO. 7146/2023 (FC)

BETWEEN:

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KUMARA
NAIKA

Location: High
Court of
Karnataka

...APPELLANTS

(BY SMT. SMITHA N., ADVOCATE)

AND:

NIL

...RESPONDENT

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF FAMILY COURTS ACT PRAYING TO SET ASIDE THE ORDER 02.08.2023 PASSED BY THE III ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU IN MC NO.1652/2023 THE DISMISSING THE PETITION AS THE PARTIES ARE NOT INTERESTED TO PROCEED WITH THE PETITION FILED UNDER SECTION 13B OF THE HINDU MARRIAGE ACT.



THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR ADMISSION THIS DAY, **K.S.MUDAGAL., J** DELIVERED THE FOLLOWING:

J U D G M E N T

Heard the appellants' counsel and perused the records.

2. The appellants were married on 27.11.2020. The appellant's presented the petition under Section 13B of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act' for short) before the III Additional Principal Judge, Family Court, Bengaluru claiming that their marriage is irretrievably broken down and they are living separately since September 2021. They sought dissolution of their marriage by mutual consent. The trial Court referred the matter to the Mediation.

3. The appellants' counsel submits that the parties could not settle the matter before the mediator as they were trying for settlement amongst themselves. Therefore, the Mediation Centre submitted the report to the Court saying that the matter was not settled due to the absence of the parties.

4. As per the impugned order, the trial Court interacted with the parties and they submitted that they are trying for reunion. Therefore the trial Court recorded that the



parties are not interested to proceed with the case and dismissed the petition.

5. Learned counsel for the appellants submits that the parties did not make such submissions and the trial Court observations are contrary to the submissions made by the parties. He further submits that the matter was deferred for sometime for orders and then abruptly the impugned order was passed.

6. The requirements to pass an order on the petition under Section 13B of the Act are as follows:

(i) The parties should be living separately for a period of not less than one year preceding the petition.

(ii) The parties have not been able to live together.

(iii) They must have mutually agreed for dissolution of the marriage.

(iv) The parties shall not move the matter before six months and beyond eighteen months of the presentation of the same.

7. In this case, the petition was dismissed within nine months. Even if it is accepted that the parties submitted before



the trial Court that they are trying for reunion then Section 13B(2) of the Act required the trial Court to wait till eighteen months to enable the parties to report the settlement. Therefore the trial Court committed error in dismissing the petition on its own without the request of the parties for such disposal.

8. If the matter was returned from the Mediation Centre for non-appearance of the parties, the trial Court at least should have referred the matter again to the Mediation Centre without dismissing the petition abruptly. The trial Court has acted contrary to Section 13B(2) of the Act. Therefore, the impugned order is liable to be set aside and the matter requires to be remitted.

9. Both the parties are present before the Court virtually and submit that there is no possibility of settlement. Since first time the mediation was not held due to the absence of the parties, to avoid delay, the parties can be referred to the Mediation Centre in this order only. The trial Court shall act upon such Mediators report. Hence, the following:

ORDER

- (i) The appeal is allowed.



(ii) The impugned order dated 02.08.2023 in M.C. No.1652/2023 on the file of the III Additional Principal Judge, Family Court, Bengaluru is hereby set aside.

(iii) The parties are hereby directed to appear before the Bengaluru Mediation Centre on 28.11.2023 at 11.00 a.m. without any further notice

(iv) On such appearance of the parties, the mediation shall be held and the report shall be submitted to the trial Court.

(v) The parties shall appear before the trial Court on 28.11.2023 at 2.00 p.m. without any further notice.

(vi) The trial Court on receipt of the mediation report shall proceed with the matter in accordance with law and dispose of the petition as expeditiously as possible.

Communicate the copy of this order to the trial Court forthwith.

**Sd/-
JUDGE**

**Sd/-
JUDGE**