

IN THE COURT OF THE DISTRICT JUDE, DIBRUGARH

Title Suit (M) No. 65 of 2021

Sri Kamal Moliya,
S/o- Sri Moniram Moliya,
R/o- No. 2 Borbil Gaon,
PO & PS- Tingkhong,
District- Dibrugarh, Assam.

... First petitioner

And

Smt. Krishna Deka Moliya,
W/o- Sri Kamal Moliya,
D/o- Sri Narayan Deka,
R/o- Tingkhong,
PO & PS- Tingkhong,
District- Dibrugarh, Assam.

...Second petitioner

Advocate for the petitioners: Smt. BD Gogoi.

Date of Hearing : 06-12-2021.

Date of Judgment : 06-12-2021.

ORDER

1. Petitioners, Sri Kamal Moliya and Smt. Krishna Deka Moliya have filed the instant petition u/s 13 B of the Hindu Marriage Act, 1955 for dissolution of their marriage by a decree of divorce by mutual consent.

2. The petitioners have contended that their marriage was solemnised as per Hindu rites on 02-04-2013, whereafter they lived together as husband and wife and out of their wed-lock, a male child namely Sri Monjit Moliya was born on 23-12-2014. The petitioners have stated that over a period of time, incompatibility grew between the parties and ultimately they started living apart since 08-09-2019. It has been stated that the parties realised that it was not possible for them to live together and hence they have decided to mutually dissolve their marriage.

3. The instant petition was filed today, i.e., 06-12-2021.
4. Both the petitioners are present in the Court today and have filed affidavit reiterating their desire to separate. The petitioners stated that they have filed the instant petition voluntarily without any force or undue influence and there is no collusion between them. It has been also submitted that the first petitioner will pay a sum of Rs. 40,000/- (Rupees Forty Thousand Only) to the second petitioner as permanent alimony and the second petitioner will withdraw cases, i.e., PRC No. 120/2021 and shall not file any maintenance or criminal case relating to their marriage including any claim for her or her minor child; that their minor son will remain with the first petitioner on the ground that the first petitioner shall properly look after their minor son and the second party will not file any guardianship case and after attaining the age of majority, the first petitioner will not object when his son wishes to go with second petitioner and the first petitioner will allow the second party to meet their son once in a month.
5. I have heard the Learned Counsel for the petitioners and perused the materials on record.
6. It is apparent that marriage between the parties was solemnised in the year 2020 but subsequently due to differences they started living separately. The petitioners have not lived together since 08-09-2019 and they are living separately, till date. Seeing no scope for their reunion, the petitioners have instituted the present petition u/s 13 B of the Hindu Marriage Act, 1955.
7. Vide petition No. 2076/2021, prayer has also been made that the waiting period of 6 (six) months as provided u/s 13 B (2) of the Hindu Marriage Act, 1955 be waived, in as much as, the parties have been living separately for more than two years and that any further waiting period would only increase their agony.
8. Section 13 B (2) provides that on receipt of a petition for divorce on mutual consent, the Court shall fix a date after six months. However, Hon'ble Supreme Court of India in the case of **(2017) 8 SCC 740**

Amardeep Singh v. Harveen Kaur while holding that "the period of six month waiting is not mandatory " further laid down that the following be looked into for waiving the period of six months waiting period:

"19. Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B (2), it can do so after considering the following:

(i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B (1) of separation of parties is already over before the first motion itself;

(ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23 (2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

(iv) the waiting period will only prolong their agony.

9. Thus, it has been construed that the provisions made u/s 13-B (2) of the Hindu Marriage Act, 1955 is not mandatory rather discretionary, subject to the condition that parties must live separately for at least 18 (eighteen) months i.e. 12 (twelve) months as required u/s 13-B (1) and 6 (six) months as required u/s 13-B (2) of the Hindu Marriage Act, 1955.

10. Ld Counsels for the parties have submitted that in the interest of both the parties, the marriage between the parties which has, for all intents and purposes broken down since before the filing of the instant petition, be formally dissolved without further delay.

11. I have perused the materials on record and heard the Ld Counsel. It is apparent that both the parties have been living separately since 08-09-2019.

12. Both the petitioners are present in the Court today and reiterated their desire to separate mutually. The parties deposed that they have filed the instant petition voluntarily without any force or undue influence and there was no collusion between them.

13. In the instant case, the parties have been living separately for the past two years, hence it is obvious that there is no scope for their reconciliation. The marriage between the parties has in fact, broken down irretrievably and there is no scope of the parties coming together as husband and wife. The consent given by the parties for mutual divorce appears to be voluntary and does not appear to be induced by any force, fraud or undue influence from any quarter.
14. Considering the fact that there is no possibility of reunion between the parties, this Court is of the considered view that if the parties are to wait for another 6 (six) months as required u/s 13 B (2), the same will prolong their agony. As the parties have settled their disputes, this Court is of the opinion that it is a fit case for waiving the waiting period of 6 (six) months as required u/s 13 B (2), which I accordingly do.
15. Prayer to dissolve the marriage on mutual consent stands allowed. Marriage solemnized between Sri Kamal Moliya and Smt. Krishna Deka Moliya is dissolved on mutual consent. Parties to bear their own cost.
16. Prepare a decree within 15 days from today.
17. Suit is disposed of uncontested.

Given under my hand and seal of this Court on this the 6th day of December, 2021 at Dibrugarh.

District Judge,
Dibrugarh