

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 1669 of 2015

With

W. P. (Cr.) No. 686 of 2015

Sri Amitabh S/o Sri Krishna Bahadur Sinha, Resident of VARDAAN, 52 Lower Burdwan Compound, P.O. & P.S. Lalpur Ranchi - 1, Jharkhand ... (*Petitioner in Cr.M.P. No. 1669 of 2015*)

Ratna @ Ratna Sinha wife of Shri Amitabh, daughter of Shri R. R. Verma, at present residing with her parents at Qr. No. E - 243, Sector - II, Opp. Russian Hostel, P. S. Jagarnathpur, P.O. Dhurwa, H.E.C., District Ranchi 834 004 ... (*Petitioner in W. P. (Cr.) No. 686 of 2015*)

Versus

1. State of Jharkhand
2. Ratna, D/o Sri R. R. Verma Resident of Qr. No. - Sector II, E - 243, Opp - Russian Hostel, PS - Jagarnathpur, PO Dhurwa HEC, Ranchi - 4, Jharkhand ... (*Opp. Parties in Cr.M.P. No. 1669 of 2015*)

1. State of Jharkhand
2. Amitabh, Advocate son of Shri Krishna Bahadur Sinha, Senior Advocate, Jharkhand High Court, resident of Vardaan, 52 Lower Burdwan Compound, P.O. & P.S. Lalpur, Town & District Ranchi - 834001 ... (*Opp. Parties in W. P. (Cr.) No. 686 of 2015*)

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

For the Petitioner : Mr. Anil Kumar, Sr. Advocate
For the State : Mr. Mukesh Kumar, A.P.P.
For the O.P. No. 2 : Mr. Mukesh Kumar Sinha, Advocate

22/30.06.2017 Heard Mr. Anil Kumar, learned senior counsel appearing for the petitioners, Mr. Manindra Kumar Sinha, learned counsel appearing for the opposite party no. 2 and Mr. Mukesh Kumar, learned A.P.P. for the State.

Since both these applications arise of the same order and involve common question of law and fact the same are being disposed of by this common order.

In Cr.M.P. No. 1669 of 2015 the petitioner is the husband of the opposite party no. 2 who has challenged the order dated 29.05.2015 passed in Maintenance Case No. 43 of 2013 by the learned Principal Judge, Family Court, Ranchi whereby and whereunder the interim maintenance application preferred by the opposite party no. 2 was allowed and the petitioner was directed to make payment of Rs. 5,000/- per month to the opposite party no. 2.

In W. P. (Cr.) No. 686 of 2015 which has been preferred by the wife the primary prayer is with respect to modification of the order dated 29.05.2015 passed by the learned Principal Judge, Family Court, Ranchi in Maintenance Case No. 43 of 2013 and for enhancing the same. A further prayer has been made in the said application to allow the petitioner (wife) to visit her son once in a week preferably on Sunday as it is alleged that the respondent no. 2 was never allowing the petitioner to meet her son.

In both these cases several attempts were made before various forums including the present Court in order to arrive at a settlement between the parties. However, the efforts made did not bear any fruit and as such this matter was directed to be listed under the heading "For Admission" so as to finally decide this issue on merits. However, during the course of hearing both the learned counsel for the parties have stated that the matter has been finally settled between the parties and an interlocutory application being I. A. No. 5031 of 2017 filed by the petitioner in Cr.M.P. No. 1669 of 2015 is on record which has been filed by the opposite party no. 2 from which it appears that pursuant to the settlement arrived at between the parties an application under Section 13b of the Hindu Marriage Act was also filed being Original Maintenance Title Suit No. 349 of 2017 which is still pending. In the said petition under Section 13b of the Hindu Marriage Act it was agreed that an amount of Rs. 11,50,000/- was to be paid to the opposite party no. 2 (wife) by the petitioner towards full and final settlement and in fact the petitioner had already paid an amount of Rs. 5,75,000/- at the time of filing of the application under Section 13b of the Hindu Marriage Act. It was further agreed upon that the rest amount of Rs. 5,75,000/- shall be paid to the opposite party no. 2 at the time of recording of the evidence of both the parties during the proceedings under Section 13b of the Hindu Marriage Act. It was also agreed therein to withdraw the cases which have been filed against each other i.e. MT S Case No. 160 of 2011 and Maintenance Case No. 43 of 2013.

It has been stated by the learned senior counsel appearing for the petitioner that since the parties have decided to separate which would

be evident from the application preferred under Section 13b of the Hindu Marriage Act and part of the terms and conditions of the settlement with respect to making payment of fifty percent of the amount towards permanent alimony has already been handed over by the petitioner to the opposite party no. 2 this case can be disposed of based on the said compromise petition. It has been stated that the parties are living separate since the year 2009 and, therefore, the statutory period of six months as contained in the provisions of the Hindu Marriage Act be waived and direction may be given to the learned court below to pass an order of mutual divorce on the next date of appearance which is on 04th July, 2017.

Mr. Maninder Kumar Sinha, learned counsel appearing for the opposite party no. 2 in Cr.M.P. No. 1669 of 2015 as well as the petitioner in W. P. (Cr.) 686 of 2015 have also candidly admitted to the compromise which has been effected by the parties and has also stated that he does not have any objection to the contention made by the learned senior counsel appearing for the petitioner with respect to waiving the statutory period of six months. He has however stated that if such direction passed by this Court the rest amount of Rs. 5,75,000/- be handed over to the opposite party no. 2 at the time of recording of evidence on 04th July, 2017 itself.

At this, Mr. Anil Kumar, learned senior counsel appearing for the petitioner, has stated that he is in a position to hand over the said amount to the opposite party no. 2 on 04th July, 2017 itself.

In view of the fact that the matter has been compromised between the parties the only impediment which arises in finally concluding the proceeding under Section 13b of the Hindu Marriage Act is the six months statutory period as envisaged in Section 13b of the said Act.

In the case of *Manoj Kedia v. Anupama Kedia* reported in **2011 1 DMC 465 (DB)** while considering the waiver of the statutory period of six months it was held as follows:

“13. We have already observed in the foregoing paragraphs that the marriage between the parties had broken down irretrievably and there is no reasonable chance for re-

union of the parties. They have been living apart for the last nine years. Any prolongation of the legal status of the marriage is not likely to bring out reconciliation. It can only help to accentuate their unhappiness by further fomenting their mutual jealousies. They are litigating against each other on the basis of allegations and counter-allegations for over nine years. In these circumstances, we are ready of the opinion that the present application made by the parties for dissolution of marriage under Section 13-B of the Act, 1955 is not the result of any collusion between the parties nor was it the result of any passing phase of mental agony or temporary felling of unhappiness. We have no doubt that decree of divorce under Section 13-B of the Act, 1955 can be passed without further waiting for statutory period of six months as per Section 13-B(2) of the Act, 1955."

In the case of ***Mittal Ramesh Panchal & Another v. Nil*** reported in **2014 1 DMC 20** the same issue was once again considered and was decided as follows:-

"10. The statutory period of six months provided under Section 13B(2) has been provided with a specific intent that the possibility of last minute reconciliation can be worked out in such matters. In dispensation of justice, the Courts are expected to do the justice between the parties by overcoming the technical difficulties, coming in the way of imparting justice. The waiver of statutory period of six months though not specifically provided but same can be read in provisions as the main object of provision is to liberalize divorce. The provision cannot be read in rigidity so as to make the provision ineffective and meaningless. The period of six months is nothing but period provided with a view to enable parties to reconsider their decision and instead of dissolving their marriage resolve their difference. It was never the intention of the Legislature that such period is to be observed irrespective of the facts of the case wherein the marriage has been irretrievably broken and there are no chances of reconciliation between the parties or it would be futile exercise to wait for six months."

Since as it appears that the marriage has irretrievably broken down between the parties and the parties having accepted the said fact have finally decided to separate instead of reconciling their marital life which is reflected in the application filed under Section 13b of the Hindu Marriage Act and in view of the undertaking which has been given by the petitioner with respect to making payment of the rest amount of Rs. 5,75,000/- on the date when the evidence of both the parties are recorded this application is disposed of with a direction to

the Principal Judge, Family Court, Ranchi to waive the statutory period of six months and after taking evidence of the petitioner as well as the opposite party no. 2 pass necessary order on the 13b application on 04th July, 2017 itself which according to the learned counsel for the respective parties is the next date of hearing in the matrimonial title suit.

In view of the submissions advanced by the learned counsel for the parties, the petitioner as well as the opposite party no. 2 shall make themselves present on 04th July, 2017 before the learned Principal Judge, Family Court, Ranchi who shall take necessary steps in accordance with law as has been indicated above in this order.

It is further made clear that the petitioner shall hand over a cheque of Rs. 5,75,000/- drawn in favour of the opposite party no. 2 (wife) at the time of recording of the evidence of the petitioner as well as the opposite party no. 2 before the court of learned Principal Judge, Family Court, Ranchi.

With the aforesaid observations and directions, these applications are disposed of.

Pending I.A., if any, also stands disposed of.

Let a copy of this order be handed over the learned counsel for the respective parties.

Let this order be communicated through FAX to the concerned court immediately.

(Rongon Mukhopadhyay, J.)