

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
TRANSFER PETITION (CIVIL) NO. 1113 OF 2020

WITH
INTERLOCUTORY APPLICATION NO. 91619/2021

AND
INTERLOCUTORY APPLICATION NO. 96456/2021

ABHISHEK NAND, THROUGH HIS POA HOLDER &
MOTHER BLANCHE ALHAD NAND PETITIONER(S)

VERSUS

KOPAL GUPTA RESPONDENT(S)

O R D E R

The instant petition has been filed under Section 25 of CPC, 1908 for transfer of the proceedings in Matrimonial Case no. 2008/2020 pending between the parties in the Court of Principal Judge, Family Court, Lucknow, Uttar Pradesh to the Principal Judge, Family Court, Bandra, Mumbai, Maharashtra.

The facts in brief manifest from the record are that the marriage between the parties was solemnized on 09.07.2018 according to the Hindu Vedic rites and customs at Arya Samaj Mandir at Greater Noida, Uttar Pradesh and they got their marriage registered with the Registrar of Marriage at Ghaziabad, Uttar Pradesh, but due to some misunderstanding which might have developed at a later stage, they both were not able to reconcile

the situation and separately filed their applications of seeking divorce.

The petitioner-husband filed his petition no.A-1722 of 2020 seeking divorce under Section 13(1)(ia) of the Hindu marriage Act, 1955 before the Principal Judge, Family Court, Bandra at Mumbai on 13.07.2020. At the same time, respondent-wife also filed an application seeking divorce on 27.08.2020 being Regular Suit No.2008 of 2020 before Principal Judge, Family Courts at Lucknow, Uttar Pradesh. Since both are not willing to live together, and are interested in seeking divorce, at this stage, an application came to be filed in this Court seeking transfer of a petition filed by the respondent-wife seeking divorce at Family Court, Lucknow to be transferred to the Court at Bandra, Mumbai and be tagged with the divorce petition filed by the petitioner-husband which was pending in said Family Court.

Notices are issued by this Court on 15.10.2020. After the respondent was served, the matter was sent for mediation by an order dated 19.03.2021 to the Supreme Court mediation Centre for amicable solution of their *inter se* dispute. With the efforts of the Mediator and with the advice extended by the respective

lawyers, parties have mutually settled their dispute and a Settlement Agreement duly signed by the parties along with their respective advocates on 13.07.2021 has been placed on record.

It is informed to this court that in terms of Para 'D' of the settlement agreement, a total sum of Rs. 8 lakhs towards full and final settlement of her claims towards alimony, maintenance and all other claims has to be paid to the respondent-wife. In this regard, the first instalment of Rs.4 lakhs has been transferred electronically by way of RTGS/NEFT in the account of the respondent-wife by the petitioner-husband on the date of Settlement Agreement i.e. 13.07.2021 and second installment of Rs.4 lakhs has been handed over to the respondent-wife's counsel today by a Demand Draft no.008941 dated 16.10.2021 drawn by Saraswat Co-operative Bank Ltd., Juhu Branch, Madhusagar, N.S.Road No.13, Near Juhu Church, Juhu, Mumbai-400049.

It has been jointly requested by the parties that if this Court consider it appropriate in exercise of its powers under Article 142 of the Constitution may grant decree of divorce by mutual consent as agreeable to the parties.

From the record, we find that both are well educated persons and the petitioner-husband is working in Toronto at Canada and the respondent-wife is also a working woman and posted at Bangalore at present.

It has been recorded in the Settlement Agreement that both of them have separately filed application(s) seeking divorce at the respective places Mumbai/Lucknow and have amicably resolved to seek divorce by consent in terms of Section 13-B of Hindu Marriage Act, 1955 on the terms and conditions which has been recorded in the Settlement Agreement dated 13.07.2021.

We take the Settlement Agreement on record. In the proceedings before the Mediator, it is recorded in the Settlement Agreement that since the petitioner-husband is working at Toronto, Canada before the marriage and immediately after their marriage solemnized on 09.07.2018, he left for Canada on 14.07.2018 and the parties have not resided together thereafter and the fact is that their marriage was not even consummated and during this short period, irretrievable disputes and differences arose between the parties and both were persuaded that it will be in their joint interest if they seek a divorce by mutual consent under Section 13-B of the Hindu Marriage Act,

1955.

It is quite clear from the record that both of them filed their applications seeking divorce under Section 13(1)(ia) of the Hindu Marriage Act, at the instance of the petitioner-husband at Family Court, Bandra, Mumbai on 13.07.2020, and at the instance of respondent-wife at Family Court, Lucknow on 20.07.2020 and this fact can be gathered that within a short period of their marriage, they lived separately for quite a long time. In effect, there appeared to be no marital ties between the parties at all.

At least the condition indicated in Section 13-B for grant of a decree of dissolution of marriage by mutual consent is present in the instant case and since both the spouses have filed their respective divorce petitions before the respective family courts at Mumbai/Lucknow (U.P.) which is pending for almost more than a year can certainly be considered as a cooling period of Section 13-B(2) being complied with as a statutory compliance in seeking a decree of dissolution of marriage by mutual consent.

Since both the parties are well-educated and when it has not been possible for them to live together and to discharge their marital obligations towards each

other for more than three years, we find no reason to continue the agony of the parties and further moreso, when they have settled their matrimonial dispute amicably with a joint request to dissolve their marriage by mutual consent as being indicated in the settlement agreement which has been placed on record.

In the above circumstances, in our view, this is one of those cases where it is advisable to invoke and exercise the powers vested in this Court under Article 142 of the Constitution.

We accordingly dispose off the Transfer Petition(Civil) No. 1113 of 2020 and transfer the Matrimonial Case no. 2008 of 2020 filed by the respondent-wife from the Court of Principal Judge, Family Court, Lucknow, Uttar Pradesh to the Court of Principal Judge, Family Court, Bandra, Mumbai and tag with the Petition No. A-1722 of 2020 filed by petitioner-husband and convert both of the petitions into proceedings under Section 13-B of the Hindu Marriage Act, 1955 and by invoking our power under Article 142 of the Constitution, we grant a decree of divorce by mutual consent, as jointly prayed.

The proceedings before the Family Court, Bandra at Mumbai are disposed of with the consent of parties

in terms of the present order. Parties to bear their own costs.

Pending application(s), if any, shall stand disposed of.

.....J
(AJAY RASTOGI)

.....J
(ABHAY S. OKA)

NEW DELHI;
OCTOBER 20, 2021.

ITEM NO.39 Court 14 (Video Conferencing)

SECTION XVI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Transfer Petition(s)(Civil) No(s). 1113/2020

ABHISHEK NAND, THROUGH HIS POA HOLDER &
MOTHER BLANCHE ALHAD NAND

PETITIONER(S)

VERSUS

KOPAL GUPTA

RESPONDENT(S)

(SETTLEMENT AGREEMENT RECEIVED. LIST BEFORE THE DIVISION BENCH AS APPLICATION FILED UNDER ARTICLE 142 OF THE CONSTITUTION & IA No. 96456/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 91619/2021 - PASSING APPROPRIATE ORDER OR DECREE UNDER ARTICLE 142 OF THE CONSTITUTION & IA No. 101422/2020 - STAY APPLICATION)

Date : 20-10-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MR. JUSTICE ABHAY S. OKA

For Petitioner(s)

Mr. Nitin Bhardwaj, AOR

For Respondent(s)

Ms. Anukriti Pareek, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Transfer Petition is disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI)
COURT MASTER (SH)

(Signed order is placed on the file)

(BEENA JOLLY)
COURT MASTER (NSH)