AFR

Reserved

Court No. - 3

Case :- FIRST APPEAL No. - 30 of 2022

Appellant :- Smt. Anamika Srivastava
Respondent :- Anoop Srivastava
Counsel for Appellant :- Ramesh Kumar Dwivedi
Counsel for Respondent :- Akhilesh Kumar Pandey,Akhilesh Kumar Pandey

Hon'ble Rakesh Srivastava,J.
Hon'ble Ajai Kumar Srivastava-I,J.

1. This first appeal under Section 19 of the Family Courts Act, 1984 has been filed challenging the orders dated 02.02.2022 and 07.03.2022 passed by the Family Court (Principal Judge, Family Court, Barabanki) rejecting the prayer made by the Appellant and the Respondent to waive the minimum period of six months stipulated under Section 13-B(2) of the Hindu Marriage Act, 1955 (for short 'the Act') for a motion for passing a decree of divorce on the basis of mutual consent.

2. Anamika Srivastava, the Appellant, was married to Anoop Srivastava, the Respondent, according to Hindu rites and rituals at Barabanki on 17.06.2010. Soon after the marriage, differences arose between them to such an extent that the Appellant left her matrimonial home on 24.09.2010 and since then she has been living with her parents. On 01.05.2013, the Appellant moved an application under Section 125 CrPC against the Respondent before the Family Court. The said case was registered as Criminal Misc. Case No. 258 of 2013 (Anamika Srivastava vs. Anoop Srivastava). On 03.10.2018, the Family Court allowed the application moved by the Appellant and directed the Respondent to pay a sum of Rs. 5000/- (Rupees five thousand only) per

month to the Appellant towards maintenance with effect from the date of judgment. The judgment and order dated 03.10.2018 was assailed by the Respondent before this Court in Criminal Revision No.10 of 2019.

3. This Court vide its order dated 08.09.2021, passed in the said criminal revision, referred the matter to the Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement between the parties. The mediation was successful. The Appellant and the Respondent agreed to dissolve their marriage. It was agreed that the Respondent shall pay a sum of Rs. 4,25,000/- (Rupees four lacs twenty five thousand only) to the Appellant towards full and final settlement of all disputes and the litigation between them whether civil or criminal will terminate. In terms of the settlement arrived at between the parties, the Respondent paid a sum of Rs. 3,00,000 (Rupees three lacs only) to the Appellant and on 13.01.2022 the parties jointly filed an application under section 13-B of the Act before the Family Court for dissolution of their marriage. The said case was registered as Regular Suit No.56 of 2022, Smt. Anamika Srivastava v. Anoop Srivastava. A copy of the settlement agreement dated 30.03.2022 signed by the Appellant, the Respondent, their counsel and the mediator has been brought on record as annexure no. SA-2 to the supplementary affidavit dated 12.04.2022.

4. On 13.01.2022 the Family Court passed an order, whereby the petition for divorce moved by the Appellant was ordered to be registered. 02.07.2022 was the date fixed for second motion and in the meantime the parties were directed to appear before the mediation centre on 14.02.2022. The relevant portion of the order dated 13.01.2022 is quoted below:

"पक्षकारों द्वारा एक साथ रहना संभव न होने का कथन किया गया तथा आपसी सहमति से तलाक की याचना की गई। पक्षकारों को पुर्नविचार हेतु छः माह का समय देना विधि अनुसार आवश्यक है।

<u>आदेश</u>

दर्ज रजिस्टर हो। पत्रावली वास्ते पुर्नविचार एवं द्वितीय मोचन हेतु दिनांक 02.07.2022 को पेश हो। इससे पूर्व दिनांक 14.02.2022 को उभय पक्ष मेडिएशन में उपस्थित हो।"

5. On **02.02.2022** the Appellant and the Respondent jointly moved an application before the Family Court under Section **13-B(2)** of the Act, seeking waiver of six months waiting period to make a motion for the court to pass decree of divorce on the ground that the mediation between the parties had already taken place before the mediation centre of this Court wherein the parties had agreed to dissolve their marriage by mutual consent and, as such, there was no occasion for the second mediation. The said application was rejected by the Family Court. The relevant portion of the order dated **02.02.2022** reads as under:-

"वाद पेश हुआ। ग–9 प्रार्थना पत्र प्रार्थीगण की ओर से इस आशय का प्रस्तुत किया गया है *कि प्रस्तुत मामले में माननीय उच्च न्यायालय लखनऊ खण्ड पीठ लखनऊ में समझौता होने के उपरान्त प्रस्तुत वाद योजित किया गया है। इसलिए प्रस्तुत मामले में मीडिएशन सेन्टर हेतु नियत तिथि दि0 14.02.2022 व सुनवाई हेतु 02.07.2022 निरस्त करते हुए शीघ्र सुनवाई हेतु अन्य तिथि नियत की जाए।*

सुना तथा पत्रावली का अवलोकन किया।

प्रस्तुत मामले में विधि द्वारा विहित उपबंध के अनुसार ही कार्यवाही सुनिश्चित करने हेतु उभय पक्ष को मीडिएशन सेन्टर हेतु नियत तिथि दि0 14.02.2022 की तिथि व द्वितीय मोशन हेतु तिथि 02.07.2022 प्रस्तुत मामले में नियत की गयी है। प्रस्तुत मामले में कोई अन्यथा आपवादिक तथ्य दर्शित नहीं की गयी है। जिससे विधि द्वारा विहित प्रक्रिया से इतर कार्यवाही करते हुए पूर्व नियत तिथि को निरस्त कर अन्य कोई तिथि नियत की जाए। अतः मामले के तथ्य एवं परिस्थितियों को देखते हुए प्रार्थना पत्र में याचित शीघ्र सुनवाई की याचना स्वीकार किए जाने का औचित्य पूर्ण आधार नहीं है। प्रार्थना पत्र निरस्त किए जाने योग्य है।

तदनुसार प्रार्थना पत्र ग–9 निरस्त किया जाता है।"

(emphasis supplied)

6. On **07.03.2022** the parties again moved an application for waiving the statutory period of six months for second motion. It was inter alia said in the said application that parties had been

living separately for more than ten years; that before the Mediation Centre of this Court the parties freely on their own accord, without any coercion or pressure, have arrived at a joint settlement. In the circumstances, six month waiting period be waived and a decree of divorce be passed forthwith. By an order dated **07.03.2022** the said application has been rejected by the Family Court on the ground that in terms of the order passed in the said case, the parties had not appeared before the mediation centre and, as such, there was no good ground to waive the statutory period of six months. The Order dated **07.03.2022** is extracted below:-

> "वाद पेश हुआ। प्रार्थीगण उभय पक्ष की ओर से प्रार्थना पत्र ग–12 इस आशय का प्रस्तुत किया गया है कि उभय पक्ष के मध्य दि0 17.06.2010 को हिन्दू रीति–रिवाज के अनुसार विवाह हुआ था। दोनों के मध्य कोई संतान नहीं है। विवाह के 3 माह बाद ही दोनों पक्ष अलग हो गये और तब से दोनों पक्ष अलग–अलग रह रहे हैं। भरण–पोषण के वाद में उभय पक्ष के मध्य विवाद विच्छेद पर सहमति हुई जिसके अनुक्रम में प्रस्तुत वाद विवाह विच्छेद हेतु अन्तर्गत धारा 13(बी) हिन्दू विवाह अधिनियम प्रस्तुत किया गया है और उभय पक्ष के मध्य आपसी सुलह समझौते से भरण–पोषण के संबंध में भी धनराशि मु0 4,25000/– तय हो गयी है जिसमें से मु0 300000/– प्रार्थिनी/वादिनी संख्या–1 को प्राप्त हो चुकी है और सुलह समझौते के अनुक्रम में मु0 1,25,000/– वादी संख्या–2 द्वारा वादिनी संख्या–1 को दिया जायेगा। न्यायालय द्वारा निर्धारित प्रथम मोशन की तिथि दि0 14.02.2022 को उभय पक्ष में समझौता नहीं हो सका। उभय पक्ष के मध्य विवाह बनाये रखने की अब कोई संभावना नहीं है। छः माह की अवधि आज्ञापक नहीं बल्कि निर्देशात्मक है इसलिए छः माह की अवधि को समाप्त कर वादीगण के वाद को उभय पक्ष की सहमति के आधार पर तत्काल आज्ञाप्त किया जाए और उभय पक्ष के मध्य गठित विवाह को विच्छेदित किया जाए।
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> सुना तथा पत्रावली का अवलोकन किया।
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> पत्रावली के अवलोकन से स्पष्ट होता है कि पूर्व में उभय पक्ष की ओर से इसी आशय का प्रार्थना पत्र दि0 02.02.2022 को प्रस्तुत किया गया था जिसे गुण–दोष के आधार पर प्रार्थना पत्र पोषणीय न होने के कारण निरस्त किया गया था।
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> प्रस्तुत प्रकरण में अन्तर्गत धारा 13(बी) हिन्दू विवाह अधिनियम उभय पक्ष के मध्य हुए विवाह को विघटित करने हेतु संस्थित वाद में प्रथम मोशन हेतु मध्यस्थता केन्द्र पर पक्षकारों को उपस्थित होने हेतु दि0 14.02.2022 की तिथि निर्धारित की गयी और द्वितीय मोशन हेतु सुनवाई की तिथि दि0 02.07.2022 नियत की गयी। किन्तु प्रार्थीगण/वादीगण प्रार्थना पत्र ग–12 समर्थित शपथ पत्र के अनुसार उभय पक्ष दि0 14.02.2022 को सुलह समझौता हेतु मध्यस्थता केन्द्र पर उपस्थित नहीं आये। यद्यपि कोविड–19 महामारी के प्रभाव व प्रसार के कारण न्यायिक कार्य व मध्यस्थता कार्य उक्त अवधि में सम्यक रूप से सम्पादित नहीं हो सका, किन्तु वर्तमान में माननीय उच्च न्यायालय के दिशानिर्देश के अनुक्रम में न्यायिक कार्य व मध्यस्थता कार्य पूर्ण रूप से संचालित किया जा रहा है *किन्तु उसके बाद भी उभय पक्ष अन्तर्गत धारा 13(बी) हिन्दू विवाह अधिनियम व परिवार न्यायालय अधिनियम*

की सुसंगत उपबंधों के अधीन सुलह समझौता हेतु मध्यस्थता केन्द्र पहुँच नहीं सके न ही सुलह–समझौता हेतु प्रयासरत हैं न ही बाद में जब मध्यस्थता कार्य सुचारू रूप से संचालित होने लगा तब सुलह–समझौता केन्द्र पहुँचने का कोई कारण दर्शित नहीं किया जा सका। स्वयं प्रार्थीगण/वादीगण के प्रार्थना पत्र के अनुसार लम्बे अन्तराल से उभय पक्ष अलग रह रहे हैं जिसके उपरान्त ही प्रस्तुत वाद योजित किया गया है। न्यायिक कार्य व मध्यस्थता कार्य सामान्य रूप से संचालित होने के उपरान्त भी उभय पक्ष प्रार्थीगण मध्यस्थता केन्द्र पर सुलह समझौता हेतु उपरस्थित नहीं हो सके। जैसा की न्याय की मंशा है।

उपरोक्त तथ्य एवं परिस्थितियों में अन्तर्गत धारा 13(बी) हिन्दू विवाह अधिनियम व परिवार न्यायालय अधिनियम के सुसंगत उपबंधों के अनुपालन में प्रार्थीगण/पक्षकारों के मध्यस्थता केन्द्र उपस्थित होने के निर्देश के अनुपालन के बिना पूर्व निर्धारित तिथि दि0 02.07.2022 के पूर्व प्रार्थीगण/वादीगण का प्रार्थना पत्र ग–12 में याचित अनुतोष को स्वीकार करते हुए प्रस्तुत वाद को तत्काल आज्ञप्त किए जाने का औचित्य पूर्ण आधार नहीं है। अतः प्रार्थना पत्र ग–12 उपरोक्त विश्लेषण के आलोक में निरस्त किया जाता है। प्रार्थीगण/उभय पक्ष दि0 15.03.2022 को सुलह समझौता हेतु मध्यस्थता केन्द्र उपस्थित हों। तत्पश्चात पत्रावली नियत तिथि दि0 02.07.2022 को पुनर्विचार व द्वितीय मोशन हेतु पेश हो।''

7. The orders dated **02.02.2022** and **07.03.2022** are under challenge in this appeal.

8. Shri Ramesh Kumar Dwivedi, learned counsel for the Appellant has contended that the marriage between the parties has irretrievably broken down and the parties have settled their differences. Relying upon a decision of the Apex Court in the case of *Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746,* the counsel contends that in the absence of any chance of reconciliation, the Family Court ought to have exercised its discretion to waive of the cooling period of six months in favour of the Appellant.

9. Shri Akhilesh Kumar Pandey, learned counsel for the Respondent has supported the counsel for the Appellant and has prayed that this appeal be allowed.

10. Heard the counsel for the parties and perused the record.

11. Section 13-B of the Act reads as under:-

"**13-B. Divorce by mutual consent.-**(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) *On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.*"

(emphasis supplied)

12. The three ingredients for initiating proceedings under Section 13-B of the Act for divorce by mutual consent are: *firstly*, that the parties to the marriage have been living separately for a minimum period of one year. *Secondly*, they have not been able to live together, and *thirdly*, they have mutually agreed that marriage should be dissolved.

13. Sub-section (1) of Section 13-B of the Act is an enabling section. It enables the parties to file a petition for divorce by mutual consent. Sub-section (2) of Section 13-B lays down the procedure for the parties to adhere to after expiry of six months from the date of filing of the petition for divorce by mutual consent. The second motion, which as per Sub-section (2) of Section 13-B is to be made not earlier than six months after the date of presentation of the petition, enables the court to proceed with the case. If the court is satisfied that the consent of the parties was not obtained by force, fraud or undue influence and

they mutually agree that the marriage should be dissolved, the court is left with no other option but to pass a decree of divorce.

14. Sub-section (2) of Section 13-B of the Act, in unequivocal terms, provides that the second motion has to be made not earlier than six months from the date of presentation of the petition before the Court.

15. Section 14 of the Act provides that notwithstanding anything contained elsewhere in the Act, it shall not be competent to the Court to entertain any petition for dissolution of a marriage by a decree of divorce, unless on the date of presentation of the petition, one year had elapsed since the date of marriage. However, the proviso to Section 14 provides that the Court may, on application made to it, in accordance with such rules as may be made by the High Court, allow a petition to be presented before one year has elapsed since the date of marriage, on the ground that the case is one of exceptional hardship to the Appellant or of exceptional depravity on the part of the respondent.

16. The provisions of the Hindu Marriage Act evince an inherent respect for the institution of marriage, which contemplates the sacramental union of a man and a woman for life. However, there may be circumstances in which it may not reasonably be possible for the parties to the marriage to live together as husband and wife. The Act, therefore has provisions for annulment of marriage in specified circumstances, which apply to marriages which are not valid in the eye of law and provisions of judicial separation and dissolution of marriage by decree of divorce on grounds provided in Section 13(1) of the said Act, which apply to cases where it is not reasonably

possible for the parties to a marriage to live together as husband and wife.

17. Section 13-B incorporated in the Act with effect from 27.5.1976, which provides for divorce by mutual consent, is not intended to weaken the institution of marriage. Section 13-B puts an end to collusive divorce proceedings between spouses, often undefended, but time consuming by reason of a rigmarole of procedures. Section 13-B also enables the parties to a marriage to avoid and/or shorten unnecessary acrimonious litigation, where the marriage may have irretrievably broken down and both the spouses may have mutually decided to part. But for Section 13-B, the defendant spouse would often be constrained to defend the litigation, not to save the marriage, but only to refute prejudicial allegations, which if accepted by Court, might adversely affect the defendant spouse.

18. Legislature has, in its wisdom, enacted Section 13-B(2) of the Act to provide for a cooling period of six months from the date of filing of the divorce petition under Section 13-B(1), in case the parties should change their mind and resolve their differences. After six months if the parties still wish to go ahead with the divorce, and make a motion, the Court has to grant a decree of divorce declaring the marriage dissolved with effect from the date of the decree, after making such enquiries as it considers fit.

19. Prior to the judgment in *Amardeep Singh (Supra)*, sub-section (2) was treated to be mandatory in nature. In *Neeti Malviya v. Rakesh Malviya, (2010) 6 SCC 413*, a Bench of two Judges of the Apex Court, while dealing with the question as to whether the period prescribed in Sub-section (2) of Section 13-B of the Act could be waived off or reduced by the Apex Court in

exercise of its jurisdiction under Article 142 of the Constitution, observed as under:

> "7. As already stated, the language of the said provision is clear and *prima facie* admits of no departure from the time-frame laid down therein i.e. the second motion under the said sub-section cannot be made earlier than six months after the date of presentation of the petition under sub-section (1) of Section 13-B of the Act."

20. However, in *Amardeep Singh (supra)*, the Apex Court considered the question as to whether the minimum period of six months stipulated under Section 13-B(2) of the Act for a motion for passing decree of divorce on the basis of mutual consent was mandatory or it could be relaxed in any exceptional situations and after taking into account the statutory provisions and the judgment on the issue for the first time opined that the statutory period of six months specified under sub-section (2) of Section 13-B of the Act was not mandatory and the court, in exceptional circumstances, can waive the same, subject to certain conditions specified therein. Paragraph 19 of the said report is extracted below:

> "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.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. *If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned."*

(emphasis supplied)

21. Thus, as held by the Apex Court in the case of *Amardeep Singh,* the period mentioned under Section 13-B(2) of the Act is not mandatory but directory. It is open to the Court concerned to exercise its discretion in the facts and circumstances of each case. However, the discretion to waive statutory period of six months is a guided discretion for consideration of interest of justice where there is no chance of reconciliation and the parties were already separated for a longer period or contesting proceedings for a period longer than the period mentioned in Section 13-B(2) of the Act.

22. In *Amit Kumar v. Suman Beniwal, 2021 SCC OnLine SC 1270,* the Apex Court enumerated some of the factors which are to be taken into consideration while exercising the discretion of waiving the statutory period of six months for moving a motion for divorce and observed as under:-

"27. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13B(2) of the Hindu Marriage Act, the Court would consider the following amongst other factors : -

i. the length of time for which the parties had been married;

ii. how long the parties had stayed together as husband and wife;

iii. the length of time the parties had been staying apart;

iv. the length of time for which the litigation had been pending;

v. whether there were any other proceedings between the parties;

vi. whether there was any possibility of reconciliation;

vii. whether there were any children born out of the wedlock;

viii. whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc."

23. Under the Act also, in respect of the family matters, Parliament has made several provisions for reconciliation. Under Section 23(2)

> "before proceeding to grant any relief under this Act, *it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties*".
>
> (emphasis supplied)

24. Sub-section (3) of Section 23 of the Act further provides for methods to facilitate the process, which reads as follows:

> "23. (3) For the purpose of aiding the court in bringing about such reconciliation, *the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days* and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, *with directions to report to the court, as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.*"
>
> (emphasis supplied)

25. The Family Courts Act was introduced with the avowed object to set up Family Courts for the settlement of family disputes, where emphasis was to be laid on conciliation and achieving socially desirable results without adherence to rigid rules of procedure and evidence.

26. Section 9 of the Family Courts Act makes it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings are informal and the rigid rules of procedure do not apply. The said provision reads as follows:

> **"9. Duty of Family Court to make efforts for settlement.—** (1) In every suit or proceeding, endeavour shall be made by the Family Court in *the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement* in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, *subject to any rules made by the High Court, follow such procedure as it may deem fit*.
>
> (2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.
>
> (3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings."
>
> (emphasis supplied)

27. No doubt Section 9 of the Family Courts Act casts an obligation upon the Family Court to make efforts for settlement. However, the Court is not supposed to act in a mechanical manner, and force the parties to engage in mediation where the marriage has irretrievably broken down. Section 9 itself states that the Court is required to make an endeavor to assist and

persuade the parties to arrive at a settlement. It also says that this has to be done in consistence with the nature and circumstances of the case. Therefore, it is clear that reference of the parties to mediation is not compulsorily required where the facts and circumstances of the case showcase that no purpose would be served out of such reference. The endeavor to get the matter settled is compulsory, but the reference to mediation by the Family Court itself is not.

28. At this juncture, it is relevant to support the above conclusion by making reference to certain extracts of a judgment of the Apex Court in *Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558*, wherein a three Judge Bench of the Apex Court observed as under:

> "*72. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.*
>
> * * *
>
> 74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.
>
> * * *

85. *Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.*

86. *In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair*. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct *de jure* what is already defunct *de facto*. *To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.*"

(emphasis supplied)

29. In the case of *Amit Kumar (Supra)* the Apex Court has observed where marriage between the parities has irretrievably broken down and the parties have mutually opted to part ways, it is better to dissolve the marriage. Paragraphs 18 and 19 of the report are extracted below:-

"18. The object of Section 13B(2) read with Section 14 is to save the institution of marriage, by preventing hasty dissolution of marriage. It is often said that **"**time is the best healer**"**. With passage of time, tempers cool down and anger dissipates. The waiting period gives the spouses time to forgive and forget. If the spouses have children, they may, after some time, think of the consequences of divorce on their children, and reconsider their decision to separate. Even otherwise, the cooling period gives the couple time to ponder and reflect and take a considered

decision as to whether they should really put an end to the marriage for all time to come.

19. *Where there is a chance of reconciliation, however slight, the cooling period of six months from the date of filing of the divorce petition should be enforced. However, if there is no possibility of reconciliation, it would be meaningless to prolong the agony of the parties to the marriage. Thus, if the marriage has broken down irretrievably, the spouses have been living apart for a long time, but not been able to reconcile their differences and have mutually decided to part, it is better to end the marriage, to enable both the spouses to move on with the life*."

(emphasis supplied)

30. In the case at hand both the parties are well educated. Admittedly, the parties lived together only for three months and after which they have separated on account of irreparable differences. The parties have lived apart for more than eleven years. The parties have appeared before the Mediation and Conciliation Centre of this Court and have settled their dispute amicably. The parties are unwilling to live together as husband and wife. Even after eleven years of separation the parties still want to go for divorce. Considering that the parties had already engaged in mediation before the Mediation Centre of this Court, and had failed to reconcile, no purpose would be served by subjecting the parties to the same process again, especially when they have been living apart for several years, and the marriage has irretrievably broken down. No useful purpose would be served in keeping the petition pending except to prolong their agony.

31. In view of the discussions made above, the appeal is allowed.

32. The impugned orders dated 02.02.2022 and 07.03.2022 passed by the Family Court are set aside. The statutory waiting period of six months under Section 13-B(2) of the Act is waived.

33. Parties are directed to appear before the Family Court on 30.05.2022. The Family Court will forthwith pass a decree of divorce in accordance with law.

Order Date :- 27.5.2022
Pradeep/-

(Ajai Kumar Srivastava-I,J.) (Rakesh Srivastava,J.)