

12.11.2021

This application was initially filed by petitioner Sri Sailash Kashyap against respondent Puja Choudhury praying for dissolution of marriage by a decree of divorce on the ground of desertion.

Perusal of records reveals that notice was served to the respondent and the respondent filed written statement on 20.9.2017. Thereafter, issues were framed on the pleadings of the parties and the suit was fixed for evidence of the complainant side. The petitioner side submitted evidence of two witnesses including himself who were duly cross examined and the respondent also filed her evidence on affidavit in the suit as DW1 on 02.09.2019 and the suit was fixed for cross examination of DW1.

Thereafter, on 16.09.2021, both the petitioners appeared before this Court and filed a joint petition being No.216/21 under Order-23 of the C.P.C, read with Section 151 of the C.P.C praying for dissolution of their marriage on compromise. It is stated that the marriage between the petitioner and the Opp. Party was solemnized on 09.02.2010 as per Hindu rites and customs which was registered on 11.05.2010 before the Marriage Officer, Goalpara Assam under the Special Marriage Act, 1954. But, after the marriage, there were misunderstanding between

the petitioner and the Opp. Party for which their conjugal life was not peaceful and they could not live together for long time and on 24.01.2012, the Opp. Party left her matrimonial home and has been staying in her parental home at Agia, Dist. Goalpara, Assam. The petitioner and the Opp. Party have been living separately since 24.01.2012. In the mean time, on 12.08.2012, the Opp. Party gave birth to a male child named Vineet Kashyap but even after giving birth of the said child, the Opp. Party did not return to her matrimonial home. In their joint petition, both of them further stated that the petitioner as well as the Opp. Party are now in a position that they can not resume their conjugal life in future and the marriage between them has been irretrievably broken down and there is no chance of reconciliation and therefore, both of them have decided to amicably settle the dispute on compromise. It is further stated that the petitioner and the Opp. Party have agreed to dissolve their marriage by a compromise decree of divorce and for this, the Opp. Party agreed to take Rs.10,00,000/- from the petitioner for final settlement which includes the permanent alimony and maintenance including the future maintenance of the Opp. Party and the minor child as well as the alimony pendente lite that had already been passed in favour of the Opp. Party by this Court @ Rs.5,000/- per month. For making such payment, the petitioner submitted two cheques vide Cheque No.344129 & 344130 dated 16.09.2021 of the State Bank of India, Bokajan Branch @ Rs.5,00,000/- (Rupees five lakh) only each along with a petition being

No.216/21. It is also contended that the Opp. Party shall not file any further litigation against the petitioner claiming maintenance for herself and for her said minor child. Both the cheques bearing No.344129 for an amount of Rs.5,00,000/- and No. 344130 amounting to Rs.5,00,000/- totalling Rs.10,00,000/- (Rupees ten lakh) only submitted by the petitioner were already handed over to the Opp. Party Smt. Pooja Chowdhury on 16.09.2021. On the basis of the compromise between the parties, they have filed the joint petition praying for dissolving their marriage with a decree of divorce. Both the parties have also filed a joint petition being No.237/21 u/s 151 stating that this court has discretionary power to waive the cooling off period of six months in dissolving the marital tie between the parties on their amicable settlement by mutual consent since the petitioner and the Opp. Party have no objection in decreeing the suit by dissolving their marriage as they had settled the dispute amicably on mutual consent. As such, both the parties prayed to treat the T.S.(D) No.20/2017 as a petition under Section 28 of the Special Marriage Act, 1954 and pass a decree of divorce waiving the cooling off period of six months in dissolving the marital tie of the petitioner and the Opp. Party.

On 28.09.2021, both the parties have filed a joint petition being No.238/21 with a prayer to treat the T.S.(D) No.20/2017 as a petition under Section 28 of the Special Marriage Act, 1954 and to pass a decree of divorce waiving

the cooling off period of six months in dissolving the marital tie of the petitioner and the Opp. Party. The parties have also produce a copy of marriage certificate issued by Marriage Officer, Goalpara and I have gone through the same.

I have heard the learned counsel representing both the parties and perused the entire case record.

Section 151 of the Civil Procedure Code envisage that nothing in this code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of the justice or to prevent abuse of the process of the court. On perusal of the case record, it appears that the marriage between the parties was solemnized on 09.02.2010 at Agia as per Hindu rites and customs and their marriage was registered in the Office of the Marriage Officer, Goalpara on 11.05.2010 as per the copy of the marriage certificate attached with the case record. After the marriage, there were misunderstanding between the petitioner and the Opp. Party for which their conjugal life was not peaceful and they could not live together for long time and on 24.01.2012, the Opp. Party left her matrimonial home and since then both of them have been living separately and they are now in a position that they can not resume their conjugal life in future and the marriage between them has been irretrievably broken down and there is no chance of

reconciliation and therefore, both of them have decided to amicably settle the dispute on compromise. The Opp. Party agreed to take Rs.10,00,000/- from the petitioner for final settlement which includes the permanent alimony and maintenance including the future maintenance of the Opp. Party and the minor child as well as the alimony pendente lite that had already been passed in favour of the Opp. Party by this Court @ Rs.5,000/- per month. The petitioner had already paid the settled amount of Rs.10,00,000/- only to the Opp. Party on 16.09.2021 through cheques.

As per the provisions of Section 28 of the Special Marriage Act, 1954 Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together 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.

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 district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

The suit was projected on 15.05.2017 by the petitioner and the respondent filed written statement on 20.9.2017. A period of four years have already passed away and both the parties have been living separately since 24.01.2012. The relationship between the parties has come to such a stage that it is not at all possible for them to live as husband and wife any more despite several interaction.

In view of the above discussions, the prayer of both the parties for waiving cooling off the period of six months is allowed and the T.S.(d) No.10/2017 is treated as a petition u/s 28 of the Special Marriage Act, 1954 and I hold that there is no impediment in granting the decree for dissolution of marriage between the parties on mutual consent as prayed for as there is no possibility of reconciliation and cohabitation. Hence, the marriage of the petitioner and respondent is dissolved from today by granting the decree of dissolution of marriage on mutual consent.

Draw up the decree accordingly within the prescribed period of time.

This proceeding is disposed of accordingly.

District Judge
Goalpara