

**Court No. - 39**

**Case :-** FIRST APPEAL DEFECTIVE No. - 207 of 2025

**Appellant :-** Smt. Minakshi Gupta

**Respondent :-** Kailash Chandra

**Counsel for Appellant :-** Aman Singh, Manoj Pandey

**Counsel for Respondent :-** Prakash Tripathi

**Hon'ble Arindam Sinha, J.**

**Hon'ble Avnish Saxena, J.**

**(Per Hon'ble Arindam Sinha, J.)**

1. Mr. Manoj Pandey, learned advocate appears on behalf of applicant-appellant and submits, his client is wife. Both parties had joined to petition the Family Court for dissolution of their marriage on mutual consent under section 13-B in Hindu Marriage Act, 1955. By impugned judgment dated 30<sup>th</sup> November, 2024, the petition was dismissed. His client and respondent are both aggrieved. His client presented the appeal on reported delay of 54 days. The delay be condoned and the appeal admitted.

2. Mr. Prakash Tripathi, learned advocate appears on behalf of respondent. He submits, his client too is aggrieved by impugned judgment. Delay be condoned and impugned judgment reversed.

3. Perused causes shown for the delay. They are accepted. The delay is condoned and the appeal admitted. The application is disposed of.

4. Mr. Pandey submits, there was direction by coordinate Bench for the parties to be present in Court. Both of them are present in Court. On query he submits, the marriage was solemnized on 6<sup>th</sup> December, 2004. Three children were born in the marriage. It is after that disputes and differences arose between the parties. On 12<sup>th</sup> January, 2022, his client along with her children, went to her parental house and parties thus separated. On 1<sup>st</sup>

August, 2023, on intervention of elders and relatives, the parties agreed to jointly petition for dissolution of the marriage. Pursuant to the agreement, they petitioned the Family Court. The petition was filed after more than the prescribed period of one year of separation. Upon filing of the petition, parties waited out subsequent prescribed period. There was and is no collusion between the parties in having petitioned the Family Court and thereafter this Court in appeal. The learned Judge erred in reckoning date of separation from on or after the date of agreement i.e. 2<sup>nd</sup> August, 2023, to dismiss the petition as not maintainable.. The judgment be reversed.

5. Mr. Tripathi confirms, submissions made on behalf of appellant are also those of his client.

6. Parties being present in Court, we asked each of them. They both answered that they have been living separately since 12<sup>th</sup> January, 2022. They had agreed to seek divorce on mutual consent in terms of agreement dated 1<sup>st</sup> August, 2023, disclosed in the appeal. They are firm in their resolve to go their separate ways. They do not have any claim or counter claim against each other, but that the children will remain with appellant.

7. We have ascertained from the record that parties have lived separately for a period of more than one year prior to their joint petition filed in the Family Court. In the time of separation they mutually agreed to petition for divorce by mutual consent, as inferred from averments made in the joint petition and the affidavit of evidence filed by the parties, There are categorical statements of no physical relation since year 2013 and separate living since 12<sup>th</sup> January, 2022.

8. Requirement under sub-section (1) in section 13-B is for separation of one year or more before the petition is presented. During the period of separation, in event there is agreement to file for divorce by mutual consent, unless there is proof that parties, for the agreement or thereafter stayed together, the meeting of minds to petition for divorce by mutual consent does not militate against them living separately at the time of

agreement made during the separation. We have next ascertained, upon filing the petition and waiting out the prescribed period of six months, motion was made for grant of divorce by mutual consent.

9. In view of aforesaid, the learned Court erred on facts in presuming togetherness because parties were, as on 1<sup>st</sup> August, 2023 in agreement that they would file for mutual divorce, as the agreement came after they separated on 12<sup>th</sup> January, 2022. Cause of action is a bundle of facts and averment that lastly the cause of action accrued on 1<sup>st</sup> August, 2023, as mentioned in the petition, is a fact that constitutes whole of the cause of action. Such averment can in no way be said to be unambiguous or clear admission of parties being together as on that date.

10. We are satisfied, on hearing the parties and making our enquiry as aforesaid, parties are entitled to divorce by mutual consent. The averments in the petition are true. Hence, we declare the marriage solemnized on 6<sup>th</sup> December, 2004 to be dissolved by mutual consent. The decree be drawn up expeditiously.

11. The appeal is **disposed of**.

**Order Date :- 21.4.2025**

NSC

**(Arindam Sinha, J.)**

**(Avnish Saxena, J.)**