

[2021 PLR-SCEJ 925Download](#)

SUPREME COURT OF INDIA

Before : Justice Dinesh Maheshwari and Justice Aniruddha Bose, J.

ANUSHA SHRIVASTAVA

Versus

VIKASH NIGAM

TRANSFER PETITION (C) NO. 2072 OF 2018

21.05.2021

Special Marriage Act, 1954, Section 25(i) and 25(iii), 28 - Waiver of waiting period - Petition filed seeking annulment of marriage and declaring marriage null and void in terms of Sections 24(1)(i), 25(i) and 25(iii) of the Act of 1954 - Counsels for the parties submitted that their intention had essentially been of seeking a divorce by mutual consent in terms of Section 28 of the Act of 1954 - We are satisfied that the dispute of the parties stands amicably resolved with the Settlement Agreement now filed - Looking to the time that has elapsed since after the parties entered into the first agreement dated 02.01.2021, whose essential terms are retained by the parties and rather they have also partly acted upon the same, it appears just and proper to grant a decree of divorce by mutual consent to the parties in terms of their agreement while waving any requirement of waiting period for the parties - Constitution of India, Article 142.

See also : [Divorce by mutual consent](#), [Marriage - Waiver of statutory period](#), [Special Marriage Act S. 25](#), [Special Marriage Act S. 28](#)

For Petitioner(s) Mr. Sameer Shrivastava, AOR Ms. Priya Kanwat, Adv. For Respondent(s) Mr. Gaurav Pathak, Adv. Mr. Virag Gupta, Adv. Ms. Archana Pathak Dave, AOR

ORDER

1. The marriage of the parties to this petition was solemnised at Bhopal (Madhya Pradesh) under the Special Marriage Act, 1954 ('the Act of 1954') on 23.03.2018. It is not in dispute that the parties had lastly lived together as husband and wife at Gurugram (Haryana).
2. On 29.09.2018, the respondent-husband filed a petition for annulment of marriage under Sections 25(i) and 25(iii) and for declaring the marriage void under Section 24(1)(i) of the Act of 1954 before the Principal District Judge, Family Court, Gurugram (Haryana). The petition so filed by the respondent-husband, being [HMA](#) No. 1114 of 2018, was taken up for consideration and the petitioner-wife was served with the notice on 08.11.2018. Thereafter,

the petitioner-wife filed the present transfer petition seeking transfer of the original case pending before the Principal District Judge, Family Court, Gurugram (Haryana) to the Family Court, Bhopal (Madhya Pradesh). In this petition, notices were issued 13.12.2018 and further proceedings in the said original petition were ordered to remain stayed.

3. After appearance of the parties, when the matter was taken up for consideration on 15.06.2020, the Court found it just and proper to refer the parties to Supreme Court Mediation Centre to explore the possibility of mediated settlement. Thereafter, the Mediation Centre sent its report dated 21.01.2021 pointing out, *inter alia*, that the parties have arrived at a settlement and an agreement to that effect was executed on 02.01.2021.

4. Thereafter, a joint application bearing No. 1424 of 2021 came to be filed by the parties with the prayer that their marriage be annulled and be declared null and void in terms of Settlement Agreement dated 02.01.2021, under Article 142 of the Constitution of India.

5. On 01.03.2021, one of us (Aniruddha Bose, J.), after having heard the parties, took the view that power and jurisdiction of the Single Judge to deal with the transfer petition under Section 25 of the Code of Civil Procedure was derived from the proviso to Order VI Rule 1 of the Supreme Court Rules, 2013 ('the Rules of 2013') but jurisdiction to pass a decree for annulment of the marriage was not vested in a Single Judge of this Court. It was also observed that a Single Judge could exercise jurisdiction under Article 142 of the Constitution of India confined to four categories of cases referred to in the proviso to Order VI Rule 1; and also on the subject which could be directly relatable or ancillary to those four categories of cases but, annulment of marriage was not falling within those four categories. It was, thus, opined that the joint application ought to be dealt with by a Bench comprising of at least two Judges of this Court because as per Order VI Rule 1 of the Rules of 2013, every cause, appeal or matter is to be heard by a Bench consisting of not less than two Judges nominated by the Chief Justice of India. The matter was, accordingly, placed before Hon'ble the Chief Justice of India for appropriate directions.

6. Thereafter, the matter was placed before a Bench of two Judges, to which one of us (Dinesh Maheshwari, J.) was a party and on 05.04.2021, the said Bench observed, with reference to the prayer made, that the respondent was free to deposit the amount of Rs. 17,00,000/- (Seventeen lakhs) in the registry of this Court within two weeks. As per office report, the said amount has been deposited by the respondent-husband on 13.04.2021.

7. On the matter being taken up on 18.05.2021, the learned counsel for the parties referred to the Settlement Agreements dated 02.01.2021 and made a request for passing appropriate orders in terms thereof. However, after having examined the Settlement Agreement, we pointed out to the parties that they were not seeking decree of divorce by mutual consent but were rather seeking annulment of marriage and declaring marriage null and void in terms of Sections 24(1)(i), 25(i) and 25(iii) of the Act of 1954; and passing of such a decree may require different steps and approach. However, learned counsel for the parties submitted that their intention had essentially been of seeking a divorce by mutual consent in terms of Section 28 of the Act of 1954; and they prayed for time to draw a fresh Settlement Agreement.

8. The parties have now filed a fresh Settlement Agreement retaining the core terms of the agreement earlier executed but while incorporating the fact of deposit of Rs.17,00,000/- (Rupees Seventeen Lakhs) by the respondent- husband in terms of the Order dated 05.04.2021 and seeking decree of divorce by mutual consent. The parents of the parties have stood as witnesses to this agreement, which is also duly signed by parties and their respective counsel.

9. The aforesaid Settlement Agreement reads as under:-

"SETTLEMENT AGREEMENT

This settlement agreement is made and executed at New Delhi on this 18 th day of May, 2021 between the Petitioner Ms. Anusha Shrivastava, aged about 34 years, D/o Sh. Akhilesh Shrivastava, R/o HIG 10, Phase 2, Ankur Complex, Shivaji Nagar, Bhopal, Madhya Pradesh-462016 hereinafter called the First Party

AND The Respondent, Mr. Vikash Nigam, aged about 38 years, S/o Sh. Krishan Dayal Nigam, R/o 649, Block B, Panki, Uttar Pradesh-208020, hereinafter called the Second Party.

WHEREAS

1. The marriage between the First Party (Petitioner) and Second Party (Respondent) was solemnized at Bhopal on 23.03.2018 and the marriage was registered under the provisions of Special Marriage Act, 1954.

2. That, Second Party filed a petition HMA/1114/2018 seeking annulment of marriage under Section 24(1)(i) and 25(i) & 25(iii) of the Special Marriage Act, 1954 before the Principal District Judge, Family Court Gurugram, Haryana on 29.09.2018.

3. That, on 15.11.2018, the First Party filed a police complaint in Bhopal against the Second Party. Subsequently, the Parties appeared before the Police on 25.11.2018 and the said police complaint was not registered as FIR as the annulment petition was pending before the Ld. Principal District Judge, Family Court Gurugram, Haryana.

4. That, on 24.11.2018, the First Party filed Transfer Petition (Civil) No.2072/2018 before the Hon'ble Supreme Court seeking transfer of petition HMA/1114/2018 pending before the learned Family Court, Gurugram, Haryana to learned Family Court, Bhopal, Madhya Pradesh.

5. That, the First Party states that no other case has been filed in any court from her and her family's side against the Second Party or family members.

6. That, this Hon'ble Court vide its order dated 15.06.2020 was pleased to refer the Parties to Mediation under the aegis of Supreme Court Mediation Centre. Comprehensive mediation sessions were held with the parties jointly and separately in the presence of their respective counsels on 13.10.2020, 17.10.2020, 07.11.2020, 09.11.2020, 15.11.2020, 21.11.2020, 25.11.2020, 26.11.2020, 05.12.2020, 14.12.2020, and on 19.12.2020.

7. That accordingly, the Parties entered into a Settlement Agreement dt. 02.01.2021 and filed a joint application (IA. 14242/2021 in T.P. (C) 2072/2018) seeking annulment of marriage before the Hon'ble Supreme Court.

8. That on 18.05.2021 during the course of proceedings, it transpired that both the Parties are now agreeable for a divorce by mutual consent, which may please be granted by the Hon'ble Supreme Court. Accordingly, the Parties requested the Hon'ble Court to allow them to prepare and submit this Settlement Agreement, which seeks divorce by mutual consent.

9. That the terms of this Agreement are same, as were in Settlement Agreement dated 02.01.2021, and nothing material has been changed therefrom.

10. That, the Parties hereto have arrived at a mutual and amicable solution in order to finally resolve all disputes. To ensure lasting peace, it has been mutually decided between the parties:

A. That the Parties have agreed that they will request the Hon'ble Supreme Court to grant divorce by mutual consent.

B. That the Second Party as per Order dated 05.04.2021 has already deposited the one-time, full and final settlement amount of Rs. 17,00,000/- (Rupees Seventeen Lakhs Only) to the First Party, in the Registry of the Hon'ble Supreme Court. The Parties will request the Hon'ble Court to release the above amount to the First Party, at the time of granting divorce by mutual consent. And in addition, the Second Party shall also return the following items to the First Party:

- i. One Gold Ring which was gifted to mother of Second Party.
- ii. One Gold Chain which was gifted to Second Party.
- iii. Kali poth Mangal sutra with golden pendent.
- iv. One set silver payal which was gifted to mother of Second Party.
- v. One Silver Plate gifted at the marriage function.
- vi. One Silver Glass gifted at the marriage function.
- vii. One set of four Steel Plates gifted at the marriage function.
- viii. Single one sided copper thaali gifted at the marriage function.
- ix. One Silver Nariyal Cover.
- x. Clothes and personal belongings that the First Party left at the residence of Second Party.
- xi. Furniture – sofa set, dining table, center table, double bed, in the present condition of having been used over the years.

xii. Silver supari covers which was given to Second Party during lagun.

xiii. M. Tech. thesis of First Party, books, Aadhaar Card, College ID of First Party.

11. That the First Party will collect the items mentioned in para 10B above, within two months of granting of divorce by mutual consent by the Hon'ble Supreme Court.

12. That, the above Clause 10A and 10B is in full and final settlement of all First Party claims towards alimony, maintenance, Stridhan, belongings and any other claims (past, present and future) whatsoever against the Second Party. The First Party shall not file any case or claim before any Court with respect to the same against the Second Party. It is also, agreed that Second Party shall also not file any case or make any claim or allegations with respect to the matrimonial relationship against the First Party.

13. Upon grant of divorce by mutual consent by the Hon'ble Supreme Court, in exercise of its jurisdiction under Article 142 of the Constitution of India, it is agreed that Second Party shall withdraw the HMA/1114/2018 pending before the Principal District Judge, Family Court Gurugram, Haryana.

14. That subject to the aforesaid terms, the parties have resolved all the disputes amicably in relation to the marriage and have been left with no pending claims against each other or their respective family members.

15. That, by signing this Agreement the parties hereto solemnly state and affirm that they have no past, present and future claims or demands against each other including maintenance, jewelleries or any other movable or immovable property and all the disputes and differences have been amicably settled by the parties hereto through the process of mediation.

16. That the Parties undertake to delete all evidence including electronic evidence that they may have of each other and their family members. The Parties undertake to not circulate any such material, or cause any harm in future relationships of either parties with other persons.

17. That, the parties undertake to abide by the terms and conditions set out in this Agreement, which will be binding upon them and which have been arrived without any coercion, duress or collusion and undertake not to raise any dispute whatsoever henceforth.

18. That, the contents of this settlement-agreement have been explained to both the parties (First Party and Second Party).

IN WITNESS WHEREOF the parties have set their respective hands on this agreement on the date, month and year above written.

Sd/-

ANUSHA SHRIVASTAVA VIKASH NIGAM

(FIRST PARTY) (SECOND PARTY)

Sd/- Sd/-

ADVOCATE FOR THE PETITIONER ADVOCATE FOR THE RESPONDENT

WITNESSES OF THE PETITIONER:- WITNESSES OF THE RESPONDENT

Sd/- Sd/-

SHRI AKHILESH SHRIVASTAVA SHRI KRISHAN DAYAL NIGAM

(FATHER OF THE PETITIONER) (FATHER OF THE RESPONDENT)

Sd/- Sd/-

SMT. SUSHMA SHRIVASTAVA SMT. KANTI NIGAM

(MOTHER OF THE PETITIONER) (MOTHER OF THE RESPONDENT)"

10. Having examined the matter in its totality, we are satisfied that the dispute of the parties stands amicably resolved with the Settlement Agreement now filed before us and there appears no reason to decline the relief as sought for by the parties in this agreement. Looking to the time that has elapsed since after the parties entered into the first agreement dated 02.01.2021, whose essential terms are retained by the parties and rather they have also partly acted upon the same, it appears just and proper to grant a decree of divorce by mutual consent to the parties in terms of their agreement while waving any requirement of waiting period for the parties. Ordered accordingly.

11. As prayed, the amount of Rs.17,00,000/- (Rupees Seventeen Lakhs) deposited by the respondent may be remitted in the Bank account of the petitioner. The particulars of her Bank account with necessary identification proofs may be supplied by the counsel for the petitioner in the Registry.

12. Accordingly, the petition filed by the respondent, being HMA No. 1114 2018 in the Court of Principal District Judge, Family Court, Gurugram (Haryana) shall stand disposed of in terms of this order. In the interest of justice, it is also provided that in case of any other requirement for appropriate conclusion of the matter or reporting compliance of some of the terms, such proceedings may be taken up before the Trial Court, who may pass appropriate orders, as may be necessary for bringing the matter to finality.

While closing on the matter, we put on record appreciation for the learned mediator who brought the parties to this settlement as also to their learned counsel who had assisted them in drawing up the Settlement Agreement and in remoulding the same in accordance with law.

The Transfer Petition and pending applications are disposed of in the above terms.

SS