

Shashi Garg

Vs

Arun Garg

(Dr. A.S. Anand, K. Venkataswami JJ)

18.09.1997

ORDER

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K.VENKATASWAMI

1. H.M.A. Case No. 221/96 pending before District Judge, Delhi is transferred to the file of this Court.
2. This Transfer Petition was filed under Section 25 of the Code of Civil Procedure with a prayer to order transfer of H.M.A. Case No. 221/96 pending before the District Judge, Delhi between the parties to the court of competent jurisdiction at Rewari, Haryana. The respondent - husband has filed the said H.M.A. Case No. 221/98 under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter called the Act) for the dissolution of the Marriage between the parties. This petition was filed some time in February, 1996 by the respondent-husband.
3. Notice was ordered in the Transfer Petition and the respondent has entered appearance through his counsel.
4. We are not giving the details of the dispute between the parties in view of the subsequent events pending this Transfer Petition.
5. When this Transfer Petition came up for hearing, the parties desired to settle the dispute outside the Court and to file a memorandum of agreement in this Court. Accordingly, an agreement signed by the parties has been filed which is at page 59 of the paper book. The parties were also present on 15.9.97 when the matter was heard. As the parties desired to settle the dispute by filing the memorandum of agreement in this Court, it has become necessary to transfer the H.M.A. Case No. 221/96 pending on the file of the District Judge, Delhi to this court and dispose of the same in the light of the agreement filed by the parties.
6. We have gone through the terms of the agreement. We have also noted that one minor daughter, by name Arushi Garg, born out of the Wedlock is there and her interest has been protected in the terms of the agreement. After going through the pleadings filed both before the District Judge, Delhi and here, we are satisfied that the parties have reached to a point of no return. Therefore, there is no purpose of persuading them to live together under matrimonial roof.
7. In clause 2 of the agreement, the parties have stated as follows:-

"2. That party No.1 and 2 jointly pray before this Hon'ble Court that their marriage be

dissolved which is dead emotionally and practically between the parties by mutual consent under the directions of this Hon'ble Court".

8. The requirements of Section 13-B of the Act have been satisfied and there is no impediment in granting the decree for divorce by mutual consent by altering the relief in H.M.A. Case No. 221/96, as one available under Section 13-B of the Act with a view to do complete justice between the parties and avoid unnecessary further litigation. We are also satisfied that the interest of the minor daughter has been safeguarded. Though clause 6(2) of the agreement enables the withdrawal of Rs. 1,00,000/- at the time of the minor daughter attaining majority or at the time of her marriage, whichever is earlier, we make it clear that the marriage cannot be legally performed before the minor daughter reaches the statutorily fixed marriageable age.

9. Accordingly, there will be a decree for divorce by mutual consent in terms of the agreement entered into between the parties on 11th Day of September, 1997. The petitioner shall withdraw the petition filed by her under Section 125 Cr. P.C. before the judicial Magistrate, Rewari. The parties will strictly comply with/adhere to the terms of the compromise deed which is taken on record and which shall form part of the decree. Transfer Petition and H.M.A. Case No. 221/96 transferred to this Court are disposed of. No costs.