

3. This is one of the unfortunate matters where the social fabric and bonding is later converted into distrust between the parties leaving no barriers left with open-ended litigation which became the reason for the spouse who solemnized their marriage as per Hindu Vedic rites and customs later became the enemies of each other.

4. The appeal although has been filed on behalf of the minor through her natural guardian(mother-Payal Maheshwari) impleading her father as respondent(R-2) questioning the order passed by the High Court impugned dated 2nd December, 2021.

5. The marriage of Payal Maheshwari and Devender Nahar(R-2) was solemnized as per Hindu Vedic rites and customs on 28th November, 2004 and from this wedlock, two lovely children, namely, Diya(DOB 25th March, 2007) and Dhruv(DOB 5th February, 2013) were born.

6. It reveals from the record that because of their ideological differences, they are living separately for sufficient long time and are in litigation instituting cases inter se against each other. After several rounds of open discussion by the parties, they have arrived to an amicable settlement for withdrawal of all pending litigations instituted by the parties inter se for the paramount interest of their children.

7. Both Payal Maheshwari and her husband Devender Nahar are qualified and well placed in their professional life. It is informed that

Payal Maheshwari is one of the Director of a firm in Singapore and Devender Nahar(R-2) is working in a senior position in a Public Sector Undertaking.

8. The parties have entered into settlement dated 19th November, 2022 and the terms as agreed between the parties are taken on record and shall be considered as part of this Order. In terms of the settlement dated 19th November, 2022, it has been jointly consented/agreed by the parties that both the children Diya (daughter) and Dhruv (son) shall remain in the exclusive custody of their mother Payal Maheshwari. Father Devender Nahar shall have visitation rights. The condition as agreed in terms of the settlement regarding visitation rights by the parties is referred herein below :-

“Both the children shall remain in the exclusive custody of their mother-Payal Maheshwari. Devender Nahar being the father will have the visitation rights. To begin with at least for a period of up to December 2023, both the children named Diya(daughter) and Dhruv(son) are permitted to meet their father Devender Nahar on 2nd Saturday and the following Sunday of every month from 10.00 AM to 4.00 PM, with a further understanding that the father Devender Nahar will take responsibility to pick up and hand over the custody of both the children back either to the mother Payal Maheshwari or to their maternal grandparent(s) by 4.00 PM at A-353, Ground Floor, Defence Colony, New Delhi-110024. Thereafter, the terms of visitation would be modified for both the children after December 2023 as per their education abroad.”

9. Along with the learned counsel for the parties, Payal Maheshwari (natural guardian of appellant-Miss D) appeared through virtual mode and Devender Nahar (R-2) appeared in person.

10. It has been jointly consented by the parties that they have settled their disputes and both are willing to abide by the terms and conditions set out in the Settlement Agreement dated 19th November, 2022 which has been arrived at by them without any coercion, duress or collusion and undertake not to raise any dispute whatsoever henceforth arising from this matrimonial relation inter se in any Court of law and have jointly consented that the Divorce Petition bearing HMA No. 835/2019 pending before the Family Court, South East District, Saket, New Delhi, in the present facts and circumstances, be transferred to this Court and they may be granted decree of divorce under Section 13B of the Hindu Marriage Act, 1955 by mutual consent by exercising power of this Court under Article 142 of the Constitution of India.

11. It has been jointly stated that due to matrimonial discord, there is an irretrievable breakdown of marriage and they have decided to withdraw the allegations which have been levelled in the course of different proceedings initiated between the parties inter se and want to bury all their past, present and the future acrimonies and disputes

arising out of their matrimonial relation and do not want to indulge in any manner to interfere between the affairs of each other in future in any respect and means including on the social media etc. and have decided to dissolve their marriage by mutual consent.

12. Since both the parties have jointly agreed on the terms indicated in the Settlement Agreement dated 19th November, 2022, we have gone through the records and find that both the parties are educated and well placed in their respective employment and are fully aware of their rights and obligations but living separately for a sufficient long time because of their irresolvable dispute and on their personal introspection, both of them are persuaded that it will be in their joint interest if they dissolve their marriage with mutual consent after taking aid of Section 13B of the Hindu Marriage Act, 1955.

13. When it has not been possible to live together and to discharge their matrimonial obligations towards each other and the parties are residing separately for sufficiently long time and have been litigating and failed to reconcile to live together, this Court finds no reason in the circumstances to prolong their agony any further and more so, when they have settled their matrimonial differences amicably to dissolve their marriage by mutual consent as agreed by the parties.

14. In our considered view, this is one of those cases where we may

invoke and exercise our power under Article 142 of the Constitution of India.

15. The details of the cases furnished are as under:-

(i) **FIR 186/2018** (Complainant daughter-Diya) under Sections 354/323 IPC and Section 8/10 POCSO Act 2012 dated 30.12.2018, PS Defence Colony, registered as SC 121/2019, titled as State Vs. Devender Nahar pending in the Court of Ms. Prabh Deep Kaur, ASJ cum FTC, District South-East, Saket Courts, Delhi.

(ii) All proceedings pending and arising from FIR 186/2018 including as given below:-

(a) **Criminal MC No. 2031/2021** titled as Devender Nahar Vs. State before the High Court of Delhi.

(b) **Criminal M.C. No. 1898/2020** titled as Payal Maheshwari Vs. Devender Nahar before the High Court of Delhi.

(iii) **GP 58/2019** titled Devender Nahar Vs. Payal Maheshwari [new number as GP 12/21 Family Court, South East, Saket.

(iv) **Civil Suit 17/2019** titled Devender Nahar Vs. Payal Maheshwari and another before the Principal Judge, Family Court, South East, Saket.

(v) **W.P(C) No.1469/2020** titled Devender Nahar Vs. First Appellate Authority Gail (India) Ltd. and Payal Maheshwari before the High Court of Delhi.

- (vi) **CM(M) No. 800/2022** titled Devender Nahar Vs. Payal Maheshwari & Ors. before the High Court of Delhi.
- (vii) **Cont. Case (Civil) (Diary) No.1356101 of 2022** (not yet numbered) titled Devender Nahar Vs. Payal Maheshwari & Ors. before the High Court of Delhi.
- (viii) **CT No. 880/2021** titled Devender Nahar Vs. Payal Maheshwari, pending before the Ld. MM South East, Saket.
- (ix) **Crl. MC No. 2780/2022** titled Devender Nahar Vs. Payal Maheshwari & Ors. pending before the Delhi High Court.
- (x) **CT No. 1147/2022** titled Devender Nahar Vs. Payal Maheshwari & Ors. pending before MM South East, Saket.
- (xi) **Crl MC No. 527/2019** titled Payal Maheshwari Vs. Devender Nahar pending before the High Court of Delhi.
- (xii) **CM(M) No. 474/2022** titled Payal Maheshwari Vs. Devender Nahar, before the High Court of Delhi.
- (xiii) **M.A. No. 156/2022** titled Ms. D Vs. Devender Nahar pending before Family Court, South East, Saket.
- (xiv) Restoration Application filed by Respondent No. 2- husband in disposed of **Perjury application No.02/2019** u/S 340 CrPC titled Devender Nahar Vs. Payal Maheshwari and Ors. pending before the Ld. ASJ, South East, Saket.

- (xv) Complaint dated 28.12.2018 filed by Payal Maheshwari at PS Defence Colony, New Delhi, vide **Diary No. 24B** at 3 p.m. against the Respondent No. 2-husband.
- (xvi) All applications/cases/proceedings arising out of the aforementioned proceedings at Serial Nos. 1-XV.
- (xvii) Any other Application/Petition/Claim filed by either party including and related to marriage, custody etc. will also be quashed.
- (xviii) Any other Application/Petition/ Proceedings in any Court, Institution or Statutory body not mentioned hereinabove filed by either party or their family members will also be quashed.

16. Since it has been agreed by the parties to close all those cases indicated above arising from this matrimonial relation, accordingly all the afore-stated proceedings which admittedly are arising from this matrimonial relation stand closed.

17. Accordingly, HMA No. 835/2019(Devender Nahar Vs. Payal Maheshwari) pending before the Family Court, South East District, Saket, New Delhi stands transferred to this Court and converted into a petition under Section 13B of the Hindu Marriage Act, 1955 and disposed of invoking our power under Article 142 of the Constitution of India by granting them a decree of divorce by mutual consent as jointly prayed by them.

18. Accordingly, the appeal stands disposed of in the above terms.

19. Registry is directed to prepare the decree in compliance of this Order and make it available to both the respective parties.

20. Parties are at liberty to place the copy of this Order before the respective Courts to close the matters in terms of the Order of this Court wherever the matters are pending.

21. Pending application(s), if any, shall stand disposed of.

.....**J.**
(AJAY RASTOGI)

.....**J.**
(BELA M. TRIVEDI)

NEW DELHI;
NOVEMBER 28, 2022

VERDICTUM.IN

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ITEM NO.51

COURT NO.6

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s). 1896/2022

(Arising out of impugned final judgment and order dated 02-12-2021 in CRLMC No. 3094/2021 passed by the High Court Of Delhi At New Delhi)

D

Petitioner(s)

VERSUS

THE STATE OF NCT OF DELHI & ANR.

Respondent(s)

(IA No. 23452/2022 - EXEMPTION FROM FILING O.T.)

(IA No. 34614/2022 - MODIFICATION OF COURT ORDER

(IA No. 110434/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 28-11-2022 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Siddharth Luthra, Sr. Adv.
Mr. Rohit Kumar Singh, AOR
Ms. Jahanvi Worah, Adv.
Mr. Rohit Khurana, Adv.
Ms. Anusuya Chaudhary, Adv.
Mr. Ayush Anand, Adv.

For Respondent(s) Mr. Ashutosh Dubey, AOR
Mr. Abhishek Chauhan, Adv.
Mr. Rajshri Dubey, Adv.
Mr. Devender Kejariwal, Adv.
Mr. Chirag Khurana, Adv.
Mr. Amit P. Shahi, Adv.
Ms. Ramya Khanna, Adv.
Mr. Gurmeet Sachdeva, Adv.
Mr. Amit Kumar, Adv.

Ms. Neela Gokhale, Adv.
Mr. Gurmeet Singh Makker, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

VERDICTUM.IN

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Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA)
ASTT. REGISTRAR-cum-PS

(VIRENDER SINGH)
BRANCH OFFICER

(Signed order is placed on the file)