

Registration No.:HMP/ 68/2022
Filing No.: HMP/ 68/2022
Filed On: 21/08/2022
Registered On: 21/08/2022
Decided on : 21/08/2023
Duration: dd/mm/yy

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE. AT. BARDOLI
HINDU MARRIAGE PETITION NO. 68 OF 2022.**

HMP/ 18/2023

Exh.17**Petitioner :**

1. Miraj Dakshesh Patel
Aged:25 years,Occupation: --,
Reside at:306,,Lafayette, St.Glendale, USA,
Now resi.At: Akoti, Tal.:Bardoli,Dist.Surat.
2. Pranali D/o Hemantkumar Patel
Aged:28 years, Occupation:--,
At:C/4,Muktanand Society,M.G.Road,
Bardoli Tal: Bardoli ,Dist.: Surat.

VERSUS**Opponent :**

1. Nobody.

Appearance :

Mr. N. R. Patil Advocate For Petitioners 1, 2.

No Advocate For Opponent 1.

**Sub: Petition U/s.13(b) of Hindu Marriage Act, 1955 for obtaining
divorce decree.**

:: J U D G M E N T :

(1) The petition is filed by the petitioner to get divorce U/s. 13(b) of the Hindu Marriage Act, 1955(for short 'the Act') in which, the petitioners have mainly stated that compromise has been occurred to take divorce by mutual consent.

(1.1) The petitioners have mainly stated that their marriage took place on 20/11/2018, at Bardoli Tal.Bardoli, District Surat as per the Hindu religious, rites, customs and usages prevailing in their community and registered at Bardoli

Nagar palika by registrar serial no.0004436 of 2018. Hence, they are legally wedded husband and wife and started to live together at petitioner No.1's home. It is further stated that after marriage, both the petitioners started to live together and enjoyed their marriage life. Petitioners' marriage life successfully run just about 2 months and then petitioner no.1 leaves petitioner no.2 and went to USA and then after petitioner no.1 came in India in January-2021 and then after both petitioners go to USA on date 2/2/2021 and then after both come in India on dt. 8/8/2021 and whereas out of this wedlock there is no child born the petitioner is regnant .and both petitioners are not meet each other. Therefore, there were grave differences about thinking and opinions of life between each other which could not be resolved the fact even if several efforts were made. Thereafter, due to differences of opinion and mismatching of the nature, during their matrimonial life and misunderstanding between them, it is not possible for them to live together under one roof as they were and are not happy with their married life. Despite of several efforts made by their relatives, elders, all failed and both have started to live separately since 23/08/2021. and petitioner no.2 left her husband house and and by this wedlock they have no child and petitioner no.2 is not pregnant from petitioner no.1, during marriage life and still at present.

(1.2) As there was no possibility of reunion and they have been living separately, so as the last resort, to obtain legal decree from the Court, they have filed present petition u/s.13(B) of the Act. Hence, by filing this petition, they have prayed for obtaining the decree of divorce by mutual consent.

(2) In support of petition, the petitioners have produced the oral as well as documentary evidence as under :-

Oral Evidence :-

[01] Exh.8 – Examination-in-chief on affidavit of petitioner No.1

[02] Exh.9 – Examination-in-chief on affidavit of petitioner No.2

Documentary Evidence :-

[01] Exh. 11 - Certificate of Registration of Marriage

[02] Exh. 12 - divorce-deed,

[03] Exh. 13 - Copy of passport of petitioner No.1

[04] Exh. 14 - Copy of Adhar card of petitioner No.2

The petitioners have filed closing pursish vide Exh.16.

(3) From the above facts, following issues arise for the decision:-

- (1) Whether the petitioners prove that they are entitled to get relief as prayed in para (12) of the plaint ?
 - (2) What order and decree ?
- (4) Findings for above issues are as under :-
- (1) In Affirmative.
 - (2) As per final order.

:: REASONS ::

(5) Issue No. 1 & 2 :-

Both the issues are co-joint. Hence, discussed together. Present petition is filed u/s.13(b) of the Act. That is required to be read with section- 19 of the said act. Heard Ld. advocate, perused the record and taken into consideration legal provisions.

(5.1) Looking to the facts of examination-in-chief on affidavits of both petitioners produced vide Exh.8 & 9. By looking the oral testimonies, it appears that between both the parties, there were some disputes, so both the petitioners decided and agreed that there is no chance of compromise, therefore, they are living separately and ended their marriage life with mutual consent. By looking the facts narrated in the petition and examination-in-chief on affidavits filed by petitioners, it is proved that both the petitioners have been living separately since 23/08/2021 and by this wedlock they have no child and petitioner no.2 is not pregnant at present. Both the petitioners' examination-in-chief on affidavits satisfy the provisions of Sec.13(B) of the Act.

(5.2) Looking to the petition and examination-in-chief on affidavits of the petitioners, it is very clear that the parties are living in different houses and they do not have desire to perform marital obligations towards each other and they have been living since 23/08/2021. The second thing is that they ' have not been able to live together' seems to indicate the concept of "broken down marriage" and it would not be possible to reconcile themselves.

(5.3) Now, considering the circumstances, both applicants moved the court to pass decree of divorce then the court after satisfying that contents of the application are true and consent of applicant should be free and it is not obtained by force, fraud or undue influence and applicants living separately **since** 23/08/2021, soon precedent to the filing application and applicant mutually agreed to dissolve the marriage between them. Hence, as per the oral and

documentary evidences produced by the petitioners and in view of Section 13(b) of Hindu Marriage Act, 1955, As both the petitioners are living abroad, this court is satisfied on verification that the affidavits produced at Exh.8 and 9 and their signatures are in them through video calling in Zoom application. Further, I found and satisfied that applicants have freely consented for divorce to each other.

(5.4) The third thing is that they have mutually agreed that the marriage should be dissolved. In the case of Swaraj Garg Vs. K.M.Garg A.I.R. 1978 Delhi 296. It is held that ***“where there is a break down of the marriage, this in itself should be a cause for which divorce should be available under law. It would then be immaterial to inquire as to which all the two parties is at fault”***. So considering the overall circumstances, and the facts of the present case, this court has found sufficient grounds for passing decree of divorce as prayed by the petitioner. Therefore, the application is required to be allowed.

Considering all the facts discussed above and the documents produced on record and keeping in mind the settled legal position, this court decides issue No.1 in affirmative and I pass the following order in reference of issue No.2, in the interest of the justice:

:: O R D E R ::

1. The petition filed by both the petitioners u/s.13(B) of the Act, 1955 is hereby allowed.
2. The marriage took place on dtd. 20/11/2018, between both the petitioners is hereby declared to be dissolved by decree of divorce by mutual consent.
3. No order as to cost.
4. Decree to be drawn accordingly.

Pronounced in the open Court today on this 21 st day of Aug, 2023.

Date.21/08/2023

Place: BARDOLI

(MR.UTTAMKUMAR NARAYANDAS SINDHI)

GJ-00741

PRINCIPAL SENIOR CIVIL JUDGE.

BARDOLI