

MHTH060006852020



Presented on : 28.02.2020.
Registered on : 28.02.2020.
Decided on : 16.01.2021.
Duration : Y.00 M.10 D.19.

IN THE COURT OF DISTRICT JUDGE, KALYAN.

AT : KALYAN

(Presided over by Shaukat S. Gorwade, District Judge-6, Kalyan)

Marriage Petition No. 21/2020.

Exh.No. 13.

(CNR NO. MHTH06-000685-2020).

Mr. Ganesh Dilip Shelar

Age : 25 years, Occ. : Service
R/at- Ward No. 5, Mordev Nagar,
near P.W.I. office, at post- Vasind,
Tal. Shahapur, Dist. Thane.

.... Petitioner No.1

AND

Mrs. Nikita Ganesh Shelar

Maiden Name : Nikita Bhagawan Garenia

Age : 29 years, Occ. : Service
R/at : Bhagawan Garenia, A-B/11,
Nav Tuljai Co. Op. Housing society,
near Asangaon station, Asangaon,
Tal. Shahapur, Dist. Thane.

.... Petitioner No.2

Petition Under Section 28 of the Special Marriage Act 1954.

Ld.Adv. Mr. Sanjay Gaikar for Petitioners No.1 & 2.

: JUDGMENT :
(Delivered on 16th January, 2021)

1] This petition is filed under section 28 of the Special Marriage Act 1954 (shortly the Act) for dissolution of marriage by mutual consent.

2] Petitioner No.1 is husband and petitioner No.2 is wife. Their marriage was solemnized on 18/12/2018 as per the provisions of the Act. They had happy marriage relations for some days.

3] They were squabbling within few months of marriage. Thus, they decided to live separately. So, they are living separately since 01/02/2019. Efforts to reunite were failed. They realized that they can't live happy married life. Hence both the petitioners filed present petition for divorce by mutual consent on 28/02/2020.

4] The petition discloses that there is no pressure, coercion, or collusion, between the parties as well as no other proceedings are pending before any other courts between petitioners. They will not claim right over the properties of each other. The petitioner No. 1 has agreed to pay Rs. 60,000/- as one

time compensation/permanent alimony to the petitioner No.2.

5] It is also mentioned in the petition that there is no possibility of reconciliation and parties do not have cohabitation since their separation.

6] Petitioners stated that they have no child born out of the said wedlock.

7] Heard petitioners in person and their Ld. advocate Mr. Sanjay Gaikar. Read petition. Perused documents. Following points arise for determination, which are answered with the reasons as under :-

POINTS

FINDINGS.

- | | |
|---|-----------------------------|
| 1. Is there any force, fraud or undue influence on the part of any of the petitioner in presenting the petition for divorce by mutual consent ? | No. |
| 2. Is there collusion between the petitioners ? | No. |
| 3. Is there unnecessary or improper delay in instituting the present petition ? | No. |
| 4. Is there any other legal ground to reject the present petition. | No. |
| 5. Are petitioners entitled to dissolve their marriage by mutual consent ? | Yes. |
| 6. What order and decree ? | <u>Petition is allowed.</u> |

REASONS

8] Petitioner No.1 and petitioner No. 2 have filed their

affidavits in lieu of examination-in-chief (Exh. 6 & 7 respectively). They have filed the copy of marriage registration certificate (Exh.10).

As to Point Nos.1 to 5 :-

All these points are related to each other hence, taken together for discussion.

9] The petition as well as affidavits of the petitioners evinces that they married on 18/12/2018. The marriage certificate (Exh. 10) shows that petitioner Nos.1 and 2 solemnized their marriage on 18/12/2018 before the Special Marriage officer, Thane . The certificate of marriage is issued vide section 13 of the Special Marriage Act by the Special Marriage Officer.

10] Section 13 (2) of the Act makes it clear that the certificate of marriage is conclusive evidence of solemnization of marriage under the Special Marriage Act 1954 as well as all the formalities respecting the signature of witnesses have been complied with.

11] Therefore, it is concluded that the marriage between the petitioners has solemnized under the Special Marriage Act, 1954

12] Both the petitioners in their petition stated that they have had happy marriage relations for some days, but thereafter, they were bickering. In the affidavits of both these petitioners

they states that due to said reason their relations have strained and they cannot live together as husband and wife. They are living separately from 01/02/2019.

13] Both the petitioners in their petition as well as affidavits stated that the efforts of reconciliation had failed. They realized that they can't live together happily, hence, filed petition for dissolution of marriage by mutual consent on 28/02/2020. Thus, the petition has filed without unnecessary or improper delay.

14] Petitioners were referred for mediation. But instead of withdrawing petition for divorce, they chose to stand still on their decision to dissolve their marriage. So, I could not find any element of settlement between the petitioners. Hence, the petition proceeded further. Ergo, it is concluded that petitioners cannot live together as husband and wife.

15] Both the petitioners state on oath that there is no force, fraud or undue influence is exercised against each other. They have filed petition for divorce by mutual consent with their own free will.

16] Petitioners state on oath that there is no collusion between them and by their free will they decided to dissolve their marriage tie.

17] Petition as well as affidavits of petitioners discloses

that they have no child born out of their wedlock.

18] Both the petitioners in their affidavits as well as petition stated that they will not file any legal proceeding against each other regarding the property or their marriage. Petitioner No. 2 has received Rs. 60,000/- as permanent alimony.

19] Petitioners married on 18/12/2018. They are living separately since 01/02/2019. They filed the present petition on 28/02/2020. The period of 6 months was given to both the petitioner for reconsideration of their decision to dissolve the marriage. Petition has not been withdrawn by either petitioner. Even after 6 months of the presentation of petition they are not in a position to reunite and continue with their marital relations.

20] There is no material on record to disbelieve the petitioners. So, relying on the affidavits of both the petitioners it is considered that the averments in the petition are true. Therefore, it is concluded that both the petitioners mutually had agreed to dissolve their marriage.

21] Considering the grounds on which petitioners decided to dissolve their marriage tie and failure of mediation and reconciliation process, the court could not find any other ground to reject the petition for divorce by mutual consent. Hence, point Nos. 1 to 4 answered in the negative and point No. 5 answered in affirmative.

22] As to point No. 6 :-

As both the petitioners filed this petition for dissolution of their marriage by their own free will, it will be just and proper to allow the petition without imposing costs on any of the petitioner. Hence, following order is passed.

ORDER

- (i) Petition for divorce by mutual consent is allowed.
 - (ii) It is hereby declared that the marriage solemnized between the petitioner No.1 Ganesh Dilip Shelar and petitioner No.2 Nikita Ganesh Shelar dated 18/12/2018 is dissolved from the date of the decree vide section 28 of the Special Marriage Act 1954.
 - (iii) Copy of the decree be given to both the petitioners free of costs vide section 34(4) of the Act.
 - (iv) No order as to costs.
 - (v) Decree be drawn up accordingly.
- Dictated and pronounced in open court.

Kalyan.
Date:- 16.01.2021.

Sd/
(Shaukat S. Gorwade)
District Judge-6, Kalyan.