

ORDER

19.11.2020:

Both the petitioners are present.

The instant case is filed by the petitioners, Smti Pinkumoni Katoki and Md. Safiur Rahman jointly u/s 28 of the Special Marriage Act, 1954 vide petition no. 1810/18 dated 14.12.2018, whereby the petitioners have prayed for decree of divorce to dissolve their marriage by mutual consent. The petitioners have stated that they had performed marriage as per the Special Marriage Act, 1954 on 23.12.2008 at Guwahati. They started their married life at the house of the petitioner no. 2 at Madhupur, Ward no. 7, PS. Biswanath Chariali, Assam and their daughter, Chanam Sayanee was born who is 6 years old now. They started to live separately without having physical relationship since 1st February, 2017 due to discord and disharmony in their conjugal life. As their relations turned worse, petitioner no. 1 shifted to a rented house at Kalyanpur and she started living there from July, 2018. They stated that there is no scope for reconciliation between them. As both the sides have been living separately and there is no chance of any reconciliation, therefore both the sides have mutually decided and agreed to discontinue their marriage and to get a decree of divorce. They have therefore prayed for a decree of divorce on ground of mutual consent.

To get the matters clarified, the petitioners have adduced evidence by submitting a joint affidavit. Both the petitioners in their affidavit testified cohesively in support of their petition and stated that they got married on 23.12.2008 under the Special Marriage Act, 1954 in Guwahati. They proved the Marriage Certificate no. 2446 dated 23.12.2008 issued by the Marriage Officer, Kamrup (M), Guwahati as Ext.1. After their marriage, they started conjugal life. They started to live separately without having physical relationship since 1st February, 2017 due to discord and disharmony in their conjugal life. As their relations turned worse, petitioner no. 1 shifted to a rented house at Kalyanpur and she started living there from July, 2018. They stated that there is no scope for reconciliation between them. As both the sides have been living separately and there is no chance of any reconciliation, therefore both the sides have mutually decided and agreed to discontinue their marriage and to get a decree of divorce.

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They by a separate affidavit jointly deposed that the petitioner no. 2, Md. Safiur Rahman shall have custody of their minor child, Chanam Sayanee and the other petitioner shall have the right to see/meet her and make conversation with her at any time and place. They have agreed that the petitioner no. 2 shall bear the burden of maintenance, proper schooling and education of the child and agreed that in case the petitioner no. 2 remarriages after obtaining the decree of divorce and subjects cruelty and torture of any kind to the child, the petitioner no. 1 shall be at liberty to take custody of their minor child. Further it has been agreed that the petitioner no. 1 shall not claim any alimony, maintenance allowance or any sort of financial help from the petitioner no. 2. They have therefore prayed for a decree of divorce on ground of mutual consent with above agreed terms.

From the evidence of both the parties, it appears that both the parties have been living separately since 1st February, 2017, i.e., after six months of their marriage. The instant petition was filed on 15.12.2018, i.e., after more than 1 year and 6 months of living separately. On 21.01.2020 and 13.03.2020, i.e., after more than six months of institution of the instant suit, the petitioners have pressed for their prayer by submitting evidence-on-affidavits.

Sec. 28 of the Special Marriage Act, 1954 mandates for a cooling off period of 6- 18 months from the filing of a petition for divorce by mutual consent. It therefore appears that the minimum cooling off period as prescribed has by now elapsed and the parties still insisted on with their prayer.

I have considered the matter deeply and also observed the attitude of the petitioners on the basis of their evidence-on-affidavits and materials on record. It appears that both the petitioners are willing to dissolve the marriage by mutual consent as their marriage has broken down to the point of no return. I have found no proof of any fraud, undue influence or any kind of force being applied on the petitioners for filing of divorce application by mutual consent.

In view of the same, the application is allowed. The marriage between the petitioners namely, Smti Pinkumoni Kotoki and Md. Safiur Rahman is hereby dissolved by mutual consent. The custody of their minor child, Chanam Sayanee shall rest on the petitioner no. 2, Md. Safiur Rahman till she attains majority and the other petitioner

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shall have the right to have access to the child at a mutually agreed time and place.

Prepare a decree of divorce by mutual consent accordingly.

The case is disposed of on mutual consent without cost.



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