राजस्थान उच्च न्यायालय पीठ, जयपुर
Certified to be a True Copy of Order Dated...

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

JAIPUR BENCH, JAIPUR

D. B. CIVIL MISC. APPEAL No. 4038 OF 2025

Smt. Manisha Saini wife of Harish Chand Saini, daughter of Bhagchand Chauhan, aged 44 years , resident of 406/29, Jagdamba Colony, Opposite Lane of Naya Ghar, Radha Rani Garden, Gulabbari, Ajmer (Raj.)

.... Appellants / Non-Applicants.

Versus

Harish Chand Saini, son of Swroop Naryana Saini, aged 45 years, resident of Near Ramdev Nagar, Uparla Kuha, Dholabhata, Ajmer (Raj.)

.... Non-Appellant (Respondent) / Applicant.

1+9=10 f

D. B. CIVIL MISC. APPEAL UNDER SECTION 19 OF THE FAMILY COURT ACT, 1984 AGAINST THE JUDGEMENT AND DECREE DT. 07.08.2025 PASSED BY MR. MAHAVEER PRASAD GUPTA, RJS (DISTRICT JUDGE CADRE), JUDGE - FAMILY COURT NO.1, AJMER IN MATRIMONIAL CASE NO. 249/2021– HARISH CHAND SAINI V/S SMT. MANISHA SAINI WHEREBY THE APPLICATION UNDER SECTION 09 OF HINDU MARRIAGE ACT, 1955 IS ALLOWED.

VALUATION OF APPEAL - RS. 20/-

COURT FEE PAID - RS. 20/-.

मनीषा सैनी

सही-प्रतिलिपि
प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय पीठ,
जयपुर

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 4038/2025
CNR: RJHC020772412025 | URN: CMA / 7005U / 2025

Smt. Manisha Saini Wife of Harish Chand Saini, Aged About 44 Years, Daughter of Bhagchand Chauhan, Resident of 406/29, Jagdamba Colony, Opposite Lane of Naya Ghar, Radha Rani Garden, Gulabbari, Ajmer (Raj.).

----Appellant

Versus

Harish Chand Saini Son of Swroop Naryana Saini, Aged About 45 Years, Resident of Near Ramdev Nagar, Uparla Kuha, Dholabhata, Ajmer (Raj.).

----Respondent

For Appellant(s) : Mr. Ashish Kishore Saksena
Mr. Harshit Mittal
Appellant, in Person

For Respondent(s) : Mr. Umang Jain,
Mr. Anuj Rohila
Respondent, in Person

HON'BLE MR. JUSTICE SUDESH BANSAL
HON'BLE MR. JUSTICE ANUROOP SINGHI

Order

12/10/2026
REPORTABLE

1. Instant statutory appeal under Section 19 of Family Courts Act, 1984 (for short, "the Act of 1984") arises out of the proceedings under Section 9 of the Hindu Marriage Act, 1955 (for Short, "HMA"), initiated by respondent-husband by filing a petition bearing Matrimonial Case No.249/2021 before Family Court No.1, Ajmer, seeking restitution of conjugal relationship with appellant-wife, wherein vide judgment dated 07.08.2025, appellant-wife has been directed to resume matrimonial relationship with respondent-husband and to perform marital obligations.

2. During course of appeal, conciliation/mediation proceedings were commenced between the parties and with the indulgence of

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family members, friends and relatives, parties have arrived at a mutual settlement agreeing to dissolve their marriage by mutual consent. Hence, a joint application under Section 13-B of HMA, supported with respective affidavits of both parties, has been filed on 08.10.2026, incorporating the terms of mutual settlement. Few relevant facts and the terms of settlement, mentioned in joint application are necessary to notice, which are as under:

"1. That the marriage of Applicant No. 1 (wife and Applicant No. 2 (husband) was solemnised on 05.02.2010 at Gulab Bari, Ajmer according to Hindu rites and ceremonies. Both the applicants are Hindus and are governed by the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act of 1955). Out of the said wedlock one son, namely Hiten, was born on 22.09.2011, who is presently about 15 years of age and has throughout been living with and in the care and custody of Applicant No. 1.

3. That the applicants have admittedly been living separately since December, 2019 and have been in continuous litigation against each other since the year 2021. There has been no resumption of cohabitation at any point of time during this entire period. The applicants have thus been living separately for a period far in excess of one year immediately preceding the presentation of this application, as required by Section 13-B(1) of the Act of 1955.

During this long period of separation the efforts made by the elders and relatives of both the families, the settlement attempted at the Sakhi One Stop Centre, Ajmer on 05.03.2020 and the conciliation undertaken by the learned Family Court have all failed. The applicants have not been able to live together, the marriage has broken down beyond repair and both the applicants have mutually agreed that the marriage should be dissolved.

4. That during the pendency of this appeal, both sides, the applicants have, of their own free will and volition and without any force, fraud or undue influence, arrived at a full and final settlement of all their disputes on the following terms and conditions:-

a) Applicant No. 2 (husband) shall pay to Applicant No. 1 (wife) a lump-sum amount of Rs. 10,00,000/- (Rupees Ten Lakh only) towards permanent alimony on or before 31.12.2026, by way of demand draft in the name of applicant no-1.

b) The aforesaid amount shall be in full and final settlement of all the claims of Applicant No. 1 against Applicant No. 2 and his family members towards her maintenance (past, present and future), permanent alimony under Section 25 of the Act of 1955, maintenance under Section 125 of the Code of Criminal Procedure, 1973 / Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Protection of Women from Domestic Violence Act, 2005, and the arrears, if any, under any order passed in the said proceedings. On receipt of the said amount Applicant No. 1 shall have no claim of any nature whatsoever against Applicant No. 2, his family members or his movable and immovable properties.

c) Applicant No. 2 undertakes before this Hon'ble Court to pay the aforesaid amount within the stipulated time.

d) All the original documents of Applicant No. 1 and of the son Hiten which are in the possession of Applicant No. 2 or his family members, shall be returned by Applicant No. 2 to Applicant No. 1, against a written acknowledgment. Applicant No. 2 undertakes that he has not retained and shall not retain any copy of, and shall not use in any manner, any such document.

e) The son Hiten shall continue to remain in the exclusive care, custody and guardianship of Applicant No. 1, who shall look after his
upbringing and education.

f) All the cases, complaints and proceedings, civil as well as criminal, instituted by either applicant against the other or against the family members of the other, the details whereof are given in the table herein below which shall be withdrawn / not pressed / got disposed of by the party who has instituted the same, in the manner stated against each. Both the applicants shall appear before the concerned court or authority, make the necessary statements and file the necessary applications and affidavits, and shall extend full cooperation to each other for that purpose.

g) Neither applicant shall hereafter institute any civil or criminal proceeding against the other or against the family members of the other in respect of the marriage or of any matter covered by this settlement, save and except for enforcement of the terms of this settlement, and neither shall interfere in any manner in the personal life of the other.

5. That the details of the cases, complaints and proceedings instituted by the applicants against each other, and the agreed course of action in respect of each, are as under:-

S. No.	Case / proceeding	Court / forum	Instituted by	Present status
1.	D. B. Civil Misc. Appeal No. 4038/2025	This Hon'ble Court	Wife	Pending
2.	All Recovery applications under Section 125(3) Cr.P.C.,	Family Court No. 2, Ajmer	Wife	Pending
3.	F.I.R. No. 186/2021, Police Station Mahila Thana, Ajmer, under Sections 498A, 406 CrPC; Criminal Case No. 930/2021	Court of PCPNDT, Ajmer	Wife	Trial pending
4.	Application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, Case No. 294/2022	Court of Judicial Magistrate No.- 6, Ajmer	Wife	Pending
5.	Civil Suit No. 281/2023	Court of Civil Judge (East), Ajmer	Husband	Pending
6.	S.B. Criminal Revision No. 976/2022	Before this Hon'ble Court	Husband.	Pending
7.	S.B. Criminal Revision No. 2066/2025	Before this Hon'ble Court	Husband	Pending

6. That an appeal is a continuation of the original proceedings and this Hon'ble Court, while seized of the appeal under Section 19 of the Family

Courts Act, 1984, has all the powers of the court of first instance. It is settled that where the parties to a pending matrimonial appeal arrive at a settlement and jointly seek dissolution of their marriage, the appellate court can itself entertain the joint application under Section 13-B of the Act of 1955 and pass a decree of divorce by mutual consent, including in an appeal arising out of a decree for restitution of conjugal rights.

7. That the period of six months prescribed under Section 13-B(2) of the Act of 1955 deserves to be waived. The Hon'ble Supreme Court in **Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746** has held that the said period is directory and not mandatory and that it is open to the court to waive it where (i) the period of six months under Section 13-B(2), in addition to the period of one year of separation under Section 13-B(1), is already over before the first motion itself; (ii) all efforts for mediation and conciliation to reunite the parties have failed and there is no likelihood of success by further efforts; (iii) the parties have genuinely settled their differences including alimony, custody of the child and all other pending issues; and (iv) the waiting period would only prolong their agony.

8. That the consent of both the applicants to this application and to the dissolution of their marriage is free and voluntary and has not been obtained by force, fraud or undue influence. This application is not being presented in collusion between the applicants. The applicants have fully understood the terms of the settlement, which have been read over and explained to them in Hindi, and undertake to remain bound by the same."

3. Both parties, are present in person, and in conformity to the averments made in the joint application under Section 13-B and the terms of settlement incorporated therein, were permitted to make their statements before the Registrar (Judicial) and in compliance thereof, the statements of both parties have been recorded, which have come on record.

4. Joint submission of learned counsels appearing on behalf of both parties is that since a satisfaction of the compliance of statutory requirement of Section 13-B (1) & (2) of HMA can be recorded by this Court, hence, instead of relegating the parties to file a joint petition under Section 13-B before the Family Court, a decree of dissolution of their marriage by mutual consent can be passed by this Court in the present appeal by converting its proceedings into the proceedings under Section 13-B and there is no legal impediment rather there are substantial High Courts precedents supporting such proposition, which would not only

eliminate further agony of parties, but also would be in conformity to the scheme of legislature to deal with the matrimonial litigation.

5. We have considered the submissions advanced by counsel for the parties and examined the material available on record.

6. The main issue which has cropped up for consideration and needs to be addressed by this Court, can be framed as follows:

> "***Where an appeal is pending before the High Court, against a decree for restitution of conjugal rights passed on a petition filed under Section 9 of HMA, and during the pendency of such appeal, the parties jointly express their unequivocal and continuing consent to dissolve their marriage, whether the High Court, in exercise of its appellate jurisdiction over the matrimonial proceedings, can treat/convert the said appeal as a petition under Section 13-B and pass a decree of divorce by mutual consent, provided the requirements of Section 13-B are duly satisfied?***"

7. In order to deal with the aforereferred issue, at the outset, it is noteworthy to refer a well evinced principle of law and justice, required to be embraced by the Courts more particularly in respect of matrimonial matters that it is the duty of the Court to decide and resolve matrimonial matters expeditiously and, if possible, amicably, so as to bring the agony, affliction and torment of parties to an end at the earliest. The legislature and the Courts, in this regard, treat matrimonial litigation as a special, if not a unique, category. We may acknowledge here that various statutory provisions, including Section 89 of CPC, Order XXXII-A Rule 3 CPC, Section 23(2) of HMA and Section 9 of the Act of 1984 mandate, propagate and suggest the Courts to make efforts to resolve the matrimonial disputes and end the litigation between the parties, through mediation/conciliation/settlement etc.

8. In aid to the abovereferred proposition, we find that there are substantive judicial precedent, as set out by the High Courts through various judgments which are helpful and supportive to arrive at a definite conclusion on the issue under consideration, as follows:

(I) In case of **Prem Lata Vs. Yash Paul**, reported in **[1985 (1) HLR 148 (P&H)]**, learned Single Judge, in an appeal arising out of a decree for restitution of conjugal rights under Section 9 of HMA, where the parties entered into compromise and made statements in support thereof, treated the proceedings under Section 13-B of HMA and passed a decree of divorce under Section 13-B of HMA;

(II) In case of **Ratna Kanthale Vs. Rajendra Kanthale**, reported in **[2000 (2) HLR 155 (MP)]**, learned Single Judge, in an appeal arising out of a decree for restitution of conjugal rights under Section 9 of HMA, where the parties entered into compromise and made statements in support thereof, deposing that they are living separately since last 5 years and have not been able to reconcile their differences, directed to dissolve the marriage by a decree of divorce under Section 13-B of HMA;

(III) A Division Bench of Punjab & Haryana High Court, in case of **Shashi Vs. Sunny Bhumbla:FAO No.M-133 of 2009** decided vide judgment dated 09.01.2012, in the matrimonial appeal filed by wife against the judgment and decree for restitution of conjugal rights passed by Family Court under Section 9 of HMA in favour of husband, entertained and allowed application under Section 13-B of HMA because during pendency of the appeal, when the matter was referred to the Lok Adalat, both parties

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agreed to dissolve the marriage by mutual consent on certain terms and conditions and finally marriage between parties was dissolved under Section 13-B of HMA.

9. While acknowledging the abovereferred judicial precedents and proposition, we do not find that there is any legal impediment, to the High Court, while seized of an appeal arising from a decree under Section 9 of HMA, permitting the parties to seek dissolution of marriage by mutual consent under the scheme of Section 13-B of HMA. We may notice here that the Division Bench of Andhra Pradesh High Court, in case of **K. Omprakash Vs. K Nalini** reported in **[AIR 1986 AP 167]**, while dealing with the provision of Section 13-B held and observed that after insertion of Section 13-B in the Hindu Marriage Act by way of amendment in the year 1976, the old concept of Hindu marriage being a sacrament, has radically been changed by treating it as a contract which, the parties can enter into and put to an end like any other contract by mutual consent. It was further held that the liberalising trend of law in the matter of granting divorce by mutual consent cannot be lost sight of by Courts while dealing with the matters under this Section.

10. The net outcome of discussion and enunciation made hereinabove is that we are able to arrive at a firm conclusion, unequivocally that the High Court while being seized of an appeal arising from a decree under Section 9 of HMA may acknowledge the mutual settlement arrived at between the parties to seek dissolution of their marriage by mutual consent and may permit to convert the proceedings into the proceedings under Section 13-B of HMA to pass a decree of divorce by mutual consent, provided

the statutory requirements of Section 13-B are duly satisfied. Hence, we answer the issue in affirmative.

11. Coming to the next issue of complying with the statutory requirements of Section 13-B (1)&(2) of HMA, since it has come on record by way of pleadings and statements of parties that both are living separately and have not been living together after December, 2019, the statutory requirement of Section 13-B (1) stands satisfied. The requirement of completion of six months cooling off period, in the stage of second motion, looses its significance in the backdrop of peculiar facts obtained in the present appeal as noticed and referred hereinabove, therefore, we are of the considered opinion that it is a fit case to waive of the cooling off period of six months following the proposition of law enunciated by the Hon'ble Supreme Court in case of **Amardeep Singh v. Harveen Kaur:(2017) 8 SCC 746**. Hence, requirement of Section 13-B (2) also stands satisfied. Accordingly, joint application dated 08.10.2026 filed by parties under Section 13-B of HMA stands allowed and by treating the present proceedings to be proceedings under Section 13-B of HMA, marriage between the parties is permitted to be dissolved by mutual consent as per the terms of mutual settlement arrived at between the parties and mentioned in the application dated 08.10.2026 filed under Section 13-B of HMA.

12. As a final result, instant appeal stands disposed of in following terms:

(I) Marriage solemnized between parties on 05.02.2010 is hereby dissolved by mutual consent and a decree of divorce under Section 13-B of HMA is hereby passed;

(II) Respondent-husband shall pay as he agree and undertakes, a lump sum amount of Rs.10,00,000/- as full and final settlement towards permanent alimony to appellant-wife by way of Demand Draft in the name of appellant-wife on or before 31.12.2026 and thereafter shall not be liable to pay any maintenance of past, present and future. Appellant-wife shall not claim any maintenance for herself and for minor son nor would claim any right in the movable and immovable properties of respondent;

(III) The custody of minor son shall continue to remain in exclusive guardianship of appellant-wife;

(IV) Impugned judgment and decree dated 07.08.2025 for restitution of conjugal rights stands quashed and set aside;

(V) Both parties shall abide by the terms and conditions of mutual settlement and shall take necessary steps forthwith to close the proceedings of pending litigation, detailed out in para No.5 of the joint application dated 08.10.2026; and

(VI) Decree be drawn accordingly.

13. All pending application(s), if any, stand(s) disposed of.

(ANUROOP SINGHI),J **(SUDESH BANSAL),J**

4/S-A/RONAK JAIMAN