

Equivalent citations: II (2006) DMC 745, (2006) 144 PLR 268

Bench: K Garewal, P Pal

Jaswinder Kaur vs Suresh Kumar on 16/2/2006

## ORDER

K.S. Garewal, J.

1. According to the learned Counsel for the appellant, the parties had filed an application Order 6 Rule 17 C.P.C. for amendment of the petition under Section 13 of the Hindu Marriage Act to one under Section 13-B of the Hindu Marriage Act. This application was filed on August 3, 2005 and a joint petition under Section 13-B was also annexed therewith. Both Jaswinder Kaur and Suresh Kumar had signed the joint petition.
2. The application for amendment was declined on August 4, 2005 on the ground that it could not be entertained at that late stage since arguments had been concluded and the case was fixed for orders.
3. Subsequently on August 4 itself the petition under Section 13 was dismissed.
4. It will be noticed from the Judgment that the divorce petition had been filed on February 7, 2002. Therefore, by August 3, 2005 the parties had also been litigating for over 3-1/2 years. It is possible that the learned Additional District Judge felt that he could not entertain the application under Section 13-B because he may have to adjourn the case for six months for the statutory cooling off period since he had no power to waive that period. Nevertheless, the amendment was not allowed and the divorce petition was dismissed on the following day.
5. The learned Counsel for the parties have submitted that if the Judgment of the learned Additional District Judge is set aside and the application for amendment is allowed then the petition would stand converted to one under Section 13-B of the Hindu Marriage Act. This petition could then be taken up for consideration immediately, 6 months period waived and the parties granted divorce.
6. In view of the joint submissions of the counsel for Jaswinder Kaur and Suresh Kumar the Judgment of the learned Additional District Judge dated August 4, 2005 deserves to be set aside and is hereby set aside. The order of dismissal of the amendment application is also hereby set aside.
7. Amendment is consequently allowed and the petition for divorce is converted to one under Section 13-B of the Hindu Marriage Act. The waiting period of six months is also waived. Parties are present in person and through their respective counsel have submitted that they are unable to live together and that their marriage should be dissolved by a decree of divorce by mutual consent since the joint application had been filed more than 6 months back. The parties have also settled their outstanding disputes. Jaswinder Kaur has no claim against Suresh Kumar in respect of any movable or immovable property, no claim for maintenance or permanent alimony. The learned Counsel for Jaswinder Kaur undertakes that in the event of Suresh Kumar filing an application under Section 482 Cr.P.C. for quashing of the F.I.R. and further proceedings under Section 406/498A I.P.C. arising out of F.I.R. No. 3 dated January 10, 2000, Police Station Chikka, District Kaithal, she shall not oppose the quashing thereof.
8. In view of the above this appeal is allowed. The Judgment of the learned Additional District Judge is hereby set aside. Resultantly the amended application under Section 13-B is also allowed and the marriage between the parties is hereby dissolved through decree of divorce.