

Bench: K Gambhir

Parshotam Lal vs Surjeet Kaur on 12/2/2008

JUDGMENT

Kailash Gambhir, J.

1. Decree of divorce granted by the Trial Court by mutual consent under Section 13B(2) of the Hindu Marriage Act is under challenge in the present appeal.

2. Brief facts for deciding the present appeal inter-alia are that the appellant husband and the respondent wife jointly filed a petition under Section 13B(1) of the Hindu Marriage Act on 4th August, 2007 and the said petition was registered as HMA case No. 656/2007. The learned Trial Court heard both the parties on the same date after recording statement of the parties and first motion as envisaged under Section 13B(1) HMA Act was allowed. Thereafter the parties had moved application under Section 151 CPC seeking waiver of six months period so as to enable them to file the second motion as envisaged under Section 13B(2) of the Hindu Marriage Act. The said waiver application moved by the parties was allowed and on the second motion respective statements of the parties were recorded and the matter was heard by learned Trial Court where after order under Section 13B(2) of Hindu Marriage Act was passed thereby dissolving the marriage between the parties by decree of divorce by mutual consent.

3. In the present appeal the said judgment and decree dated 8.8.2007 passed by the learned Trial Court of Shri Gulshan Kumar, Additional District Judge, Delhi in HMA No. 682/2007 is under challenge by the appellant husband. The main grievance raised by the appellant husband in the present appeal is that the judgment and decree has been passed by the learned Trial Court in undue haste without affording any sufficient opportunity to the appellant. The other grievance raised by the appellant is that due to the grant of waiver of six months period the appellant was not able to apply his mind and think over the matter before taking any final decision on the second motion and therefore, the appellant has been deprived of the statutory period as provided under Section 13-B of the Hindu Marriage Act and due to deprivation of the said period there is not only miscarriage of justice but the order itself cannot sustain being illegal.

4. Counsel appearing for the appellant contends that the statutory period of six months as provided under Section 13-B(2) of the Hindu Marriage Act, cannot be allowed to be waived as during this period alone, parties to the marriage can take a rational decision with sufficient time at their disposal to give rethinking to their decision.

5. Counsel for the appellant further submits that the respondent got signed from the appellant second motion petition as well as waiver application as the respondent had evil designs to grab the property of the appellant. Counsel for the appellant further submits that earlier also, the respondent got divorce by mutual consent so as to grab the property of her previous husband.

6. Per contra, counsel appearing for the respondent refutes the said submission made by the counsel for the appellant. Counsel for the respondent submits that the period of six months as provided under Section 13-B(2) of the Hindu Marriage Act is merely directory and not mandatory and therefore, the Tribunal has rightly and correctly waived the statutory period of six months. Counsel for the respondent further submits that the consent given by the appellant was voluntary and there was no exercise of any kind of force, fraud or undue influence upon the appellant for obtaining his consent.

7. Counsel for the respondent further submits that the appellant himself is a signatory to the joint petition as well as the application moved for waiver of the statutory period of six months. Not only this, the appellant himself came forward to give statement before the Court and it is only after complete satisfaction of the court,

the court had passed a decree under Section 13-B(2) of the Hindu Marriage Act. Counsel for the respondent further submits that the parties had been living separately from each other w.e.f. 2.8.2006 due to their temperamental differences and they had settled all their disputes and claims for a sum of Rs. 1,40,000/- and it is the appellant himself who had paid Rs. 70,000/- to the respondent at the time of recording of statement at the time of first motion petition and the balance amount of Rs. 70,000/- was paid by him by way of demand draft bearing No. 496663 drawn on Bank of Maharashtra, Rohini, Delhi at the time of second motion. Not only this, the appellant had also transferred ownership rights of his house bearing No. G-8/200, First and Second Floor, Sector 16, Rohini, Delhi with roof rights in favor of the respondent. The appellant had also agreed not to interfere with the custody of the children which continued to remain with the respondent. Respondent No. 2 had also undertaken to withdraw the complaint filed by her in Crime against Women Cell, Pitampura. The contention of learned Counsel for the Respondent is that the terms of settlement as agreed between the parties were totally implemented from both sides and conscious decision was taken by the parties to seek divorce by mutual consent and therefore, the appellant cannot be allowed to challenge the said divorce decree on totally false and flimsy pleas raised by the appellant. The appellant is rather estopped under law to challenge the said decree which was passed after complete deliberations between the parties and their counsel. Counsel for the respondent submitted that the present appeal filed by the appellant is nothing but gross abuse of process of court.

8. I have heard learned Counsel for the parties and have perused the record.

9. Marriage between the parties was solemnized on 14.12.2004. It is not in dispute that the parties have been living separately. Since both the parties have jointly moved their petition under Section 13-B(1) of the Hindu Marriage Act and then under Section 13-B(2) of the Hindu Marriage Act, the application seeking waiver of the statutory period of six months was also moved jointly by the parties. In support of this application, they had also executed and had sworn in their respective affidavits. Statements were also recorded by the trial court. It is also not in dispute that a sum of Rs. 1,40,000/- was paid by the appellant to the respondent at two different stages and even the property of the appellant was transferred in favor of the respondent. With all these overt acts committed by the parties it cannot be said that there was no conscious decision taken by the parties to seek divorce by way of mutual consent.

10. The only question which requires consideration is whether the trial court was competent in granting waiver of the period of six months as prescribed under Section 13-B of the Hindu Marriage Act.

11. This issue is no more res integra as our own High Court in Civil Revision Petition No. 1121/1997 entitled Arvind Sharma v. Dhara Sharma and in Anita Sharma v. Nil, has taken a view that period of six months as provided under Section 13-B(2) of the Hindu Marriage Act is directory in nature and in a case where all other requirements are satisfied then the said period of six months can be waived. In this regard the relevant paragraphs of the judgment in Anita Sharma's case (Supra) is reproduced below:

(c) Karnataka High Court in Smt. Roopa Reddy v. Prabhakar Reddy reported as where it was held that the period of 6 months provided under Section 13B-2 is directory and not mandatory and the following position of law was laid down:

13. The next question is whether the requirement under Section 13-B of the Hindu Marriage Act has to be considered as mandatory or directory. The words used in the Section shall have to be read in the context in which the liberalised provision has been made by the legislature enabling the unwilling parties to seek divorce instantaneously and thus to put an end to the untold misery. When the intention of the Legislature in introducing Section 13-B(2) is to liberalise and to unlock the wedlock the legislature has never intended the period of 6 months mentioned in the Act shall be strictly complied with. But, in spirit the Section is directory in nature and it has been incorporated to help 2 discordant spouse to get quick separation and to lead their remaining life without any agony. If Section 13-B(2) is read as mandatory, the very purpose of liberalising the policy of decree of divorce by mutual consent will be frustrated. Thus, Section 13-B(2), though it is

mandatory in form is director in substance.

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18. Marriage is an union of 2 hearts. Success of married life depends on the edifice built with the mutual trust, understanding, love affection service and self sacrifice. Once this edifice is shaken, happy married life will be shattered into pieces. The result is one of the misery and emotion. Whether one accepts it or not liberalisation in the away of living of individuals and reformation in age old customs and due to modernisation and understanding of individual rights and equal status irrespective of sex it is natural for either of the spouse to seek for dissolution. Where the marriage tie has been broken the court has to look to the interest of the parties and the welfare of the children as paramount. When it is impossible to live like husband and wife, any compulsion to unite them will lead to social evils and disturbance of mental peace and disorder in the family life. However, rigid social fabric it is not the social system but the personal safety of the parties to the wedlock, shall prevail. This should be the guiding principle in view of Section 13B(1) of the Act. There is complete destruction of the essence of marriage between parties and it has reached the stage of irretrievable breakdown.

19. In the background of the circumstances narrated in the case, the request made by both parties for divorce by mutual consent is the only just and proper way to allow them to spend their remaining period of life happily with contentment instead of compelling them to lead a miserable and emotional life without any constructive purpose.

I am in respectful agreement with the view taken by the Karnataka High Court in Smt. Roopa Reddy's case (supra) to the effect that the provisions of Section 13B(2) are directory and not mandatory.

8. This Court also in a judgment in FAO 756 of 2003 in Pooja Gupta and Anr. v. Nil in respect of a petition under Section 13 B(1) of the Act had held as follows:

The above statement of objects and reasons though made in the context of parity with Section 28 of Special Marriage Act also clearly indicates that the legislative intent was expeditious disposal of divorces by mutual consent. In my view as long as the Court is satisfied as an essential reason for exemption for filing a divorce by mutual consent prior to expiry of one year after the marriage that the plea for mutual consent is not under coercion/intimidation or undue influence and there are no chances of reconciliation and the parties have fully understood the impact and effect of the divorce by mutual consent, the continuance of such a marriage is bound to cause undue hardship to the spouses. The other relevant considerations which may be considered for granting the exemption from passage of one year before filing a petition for divorce by mutual consent are:

- (a) the maturity and the comprehension of the spouses;
- (b) absence of coercion/intimidation/undue influence;
- (c) the duration of the marriage sought to be dissolved;
- (d) absence of any possibility of reconciliation;
- (e) lack of frivolity;
- (f) lack of misrepresentation or concealment
- (g) the age of the spouses and the deleterious effect of the continuance of a sterile marriage on the prospects of re-marriage of the parties

12. In the facts of the present case, the marriage between the parties was solemnized on 14.12.2004 and they were living separately w.e.f. 2.8.2006. A joint petition moved by the parties under Section 13-B(1) of the Hindu Marriage Act was allowed vide order dated 4.8.2007 and the second petition under Section 13-B(2) was allowed vide order dated 8.8.2007. It will be thus evident that joint petition under Section 13-B(1) was moved after expiry of one year from the date after they started living separately. So this requirement of separation of one year as envisaged under Section 13-B(1) is fully satisfied.

13. Para 4 of the impugned judgment would show that efforts were made by the Court also for effecting reconciliation between the parties but the same did not yield any result. Statements of both the parties were recorded and the learned trial court after feeling satisfied that the consent of the parties for obtaining divorce by mutual consent was not obtained by force, fraud or undue influence and the petition was not filed by them in collusion with each other, then the said decree of divorce by mutual consent was passed.

14. The Court was fully satisfied, as both the parties had fully honoured their part of settlement as agreed between them. Counsel for the appellant has failed to point out as to how and in what manner the appellant was constrained to agree to the filing of second motion petition or for seeking waiver of the said six months' period. The appellant has further failed to give any explanation as to how the petitioner No. 1 had agreed to pay the said sum of Rs. 1,40,000/- to his wife besides transferring the ownership rights of his property in her favor. Acts of 'undue influence', 'fraud' etc., are cognate vices and need to be specifically pleaded and proved. Mere allegation that the respondent had grabbed the immovable property of the appellant and also huge amount, unsupported with any document or evidence, is not sufficient. In this regard in Svensha Handelsbanken v. Indian Charge Chrom, the Hon'ble Apex Court observed as under:

42. Fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt. A finding as to fraud cannot be based on suspicion and conjecture.

15. No allegations of fraud or exercise of any kind of force on the appellant by the respondent wife has also been made. The appeal filed by the appellant is wholly misconceived and devoid of any merit and the same is hereby dismissed.