
Before V.M. Jain & S.S. Saron, JJ

GURPINDER KAUR SAHSI—*Appellant*

versus

RAVINDER SINGH SAHSI—*Respondent*

F.A.O. NO. 112-M OF 2003

19th November, 2004

Hindu Marriage Act, 1955—S. 13-B—Joint petition by husband & wife for divorce by mutual consent filed—Trial Court dispensing with statutory waiting period of 6 months on a joint application for condonation of delay—After recording statement of parties Trial Court granting decree for divorce by mutual consent—Challenge by wife—S. 13-B(2) provides that a decree for divorce by mutual consent could be granted on a motion made by both the parties not earlier than 6 months of the presentation of the petition—Trial Court passing decree of divorce after about 24 days of the filing of petition—Trial Court has no power to curtail the statutory period of six months on the statements of the parties—Decree passed by trial Court is contrary to the mandatory provisions of S. 13-B and is liable to be set aside—Divorce petition dismissed.

Held, that both the parties are competent to file a joint petition for divorce by mutual consent, provided they were living separately for a period of one year. Further more, it is provided that on the motion made by both the parties not earlier than 6 months after the date of presentation of the said petition and not later than 18 months of the said date, the Court on being satisfied after hearing the parties and after making such an inquiry as it thinks fit, pass a decree of divorce dissolving the marriage by mutual consent. Thus, it would be clear that a decree for divorce by mutual consent under Section 13B of the Act could be granted on a motion made by both the parties not earlier than 6 months of the presentation of the petition seeking dissolution of marriage by a decree of divorce by mutual consent.

(Para 7)

Further held, that the petition under Section 13B of the Act (for the first time) was presented on 1st October, 2002 and the final decree dissolving the marriage between the parties by a decree of divorce by mutual consent, was passed by the learned trial Court on 24th October, 2002 i.e. just after 24 days of the filing of the petition for divorce by mutual consent. This decree, on the face of it, is contrary to the statutory provisions provided under Section 13B of the Act.

(Para 8)

J.S. Toor, Advocate, *for the Appellant*.

J.S. Brar, Advocate, *for the respondent*.

JUDGEMENT

V.M. JAIN, J.

(1) This appeal has been filed by the wife against the decree for divorce by mutual consent under Section 13B of the Hindu Marriage Act (hereinafter referred to as the Act), passed by the learned trial Court.

(2) The facts, relevant for the decision of the present appeal, are that on 1st October, 2002, Gurpinder Kaur Sahsi (wife) and Ravinder Singh Sahsi (husband) filed a joint petition under Section 13B of the Act, seeking dissolution of marriage by a decree of divorce by mutual consent. On 1st October, 2002, the petition was adjourned to 5th April, 2003 for recording the statements of the parties. Meanwhile, a joint application was filed by the parties for taking up the file and to condone the period of 6 months and to decide the petition earlier. Thereupon, the learned trial Court took up the main petition by preponing the date and after dispensing with the statutory requirement of the waiting period of 6 months, the learned trial Court, after recording the statements of the parties, accepted the petition and passed the decree for divorce by mutual consent under Section 13B of the Act,—*vide* judgment and decree dated 24th October, 2002. Aggrieved against hte same, Gurpinder Kaur Sahsi (wife) filed the present appeal in this Court.

(3) Notice of motion was ordered to be issued to the respondent. The records were also ordered to be summoned and the same were duly received and perused. *Vide* order dated 26th October, 2004, while adjourning the case for arguments, it was directed that the appeal shall be disposed of at the motion stage itself.

(4) We have heard learned counsel for the parties and have gone through the record carefully.

(5) Learned counsel for the appellant-wife submitted before us that the judgment and decree dated 24th October, 2002, passed by the learned trial Court granting the decree for divorce by mutual consent under Section 13B of the Act without waiting for the statutory period of 6 months, were illegal and void and were liable to be set aside. Reliance in this regard has been placed on the law laid down by the Hon'ble Supreme Court in the case reported as **Smt. Sureshta Devi versus Om Parkash (1)**. On the other hand, learned counsel for the respondent-husband submitted before us that the statutory period of 6 months, as required under Section 13B of the Act, could be curtailed, if so prayed by the parties in their statements. Reliance has been placed on the law laid down by a Division Bench of this Court in case reported as **Smt. Krishna Kheterpal versus Satish Lal (2)** and on the Single Bench judgment of this Court reported as **Smt. Malwinder Kaur versus Devinder Pal Singh (3)**.

(6) After hearing learned counsel for the parties and perusing the record, in our opinion, the present appeal must be allowed, the judgment and decree, passed by the trial Court, must be set aside and the petition for divorce by mutual consent, must be dismissed.

Section 13B of the Act reads as under :—

“13B—Divorce by mutual consent.—(1) Subject to the provisions of this Act, a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(1) AIR 1992 S.C. 1904

(2) 1986 (2) P.L.R. 608

(3) AIR 2003 Pb. & Haryana 179

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

(7) From a perusal of the above, in our opinion, it would be clear that both the parties are competent to file a joint petition for divorce by mutual consent, provided they were living separately for a period of one year. Furthermore, it is provided that on the motion made by both the parties not earlier than 6 months after the date of presentation of the said petition and not later than 18 months of the said date, the Court on being satisfied after hearing the parties and after making such an inquiry as it thinks fit, pass a decree of divorce dissolving the marriage by mutual consent. Thus, it would be clear that a decree for divorce by mutual consent under Section 13B of the Act could be granted on a motion made by both the parties not earlier than 6 months of the presentation of the petition seeking dissolution of marriage by a decree of divorce by mutual consent.

(8) In the present case, as referred to above, the petition under Section 13B of the Act (for the first time) was presented on 1st October, 2002 and the final decree dissolving the marriage between the parties by a decree of divorce by mutual consent, was passed by the learned trial Court on 24th October, 2002 i.e. just after 24 days of the filing of the petition for divorce by mutual consent. In our opinion, this decree, on the face of it, is contrary to the statutory provisions provided under Section 13B of the Act.

(9) In AIR 1992 Supreme Court, 1904 (*supra*), after considering the provisions of Section 13B of the Act, it was held that sub Section (1) of Section 13B of the Act required that the petition for divorce by mutual consent must be presented before the Court jointly between the parties and that there were 3 other

requirements of sub-section (1) namely (i) they have been living separately for a period of one year, (ii) they have not been able to live together and (iii) they have mutually agreed that the marriage should be dissolved. It was further held by the Hon'ble Supreme Court that under sub-section (2) of Section 13B of the Act, the motion before the Court for hearing the petition should also be made by both the parties. It was further held that under sub-section (2), the parties are required to make a joint petition "not earlier than 6 months after the date of presentation of the petition and not later than 18 months after the said date". It was further held in the said authority that the aforesaid motion enables the Court to proceed with the case in order to satisfy itself about the genuineness of the averments in the petition and also to find out whether the consent was not obtained by force, fraud and undue influence. After considering the question as to whether it is open to one of the parties at any time till the decree of divorce is passed, to withdraw the consent given to the petition, it was held by the Hon'ble Supreme Court that from the analysis of Section 13B of the Act, it will be apparent that the filing of the petition with mutual consent did not authorise the Court to make a decree for divorce and that there is a period of waiting from 6 to 18 months after the said date. It was further held that this interregnum was obviously intended to give time and opportunity to the parties to reflect on their move and to seek advice from relations and friends. It was further held that in this transitional period, one of the parties may have a second thought and change mind not to proceed with the petition and the spouse may not be a party to the joint motion under sub-section (2) of the Act and there is nothing in the Section which prevents such course. It was further held that at the time of the filing of the petition by mutual consent, the parties are not unaware that their petition does not by itself snap marital ties and that sub-section (2) of Section 13B of the Act is clear on this point. It was further held that what is significant in this provision is that there should also be mutual consent when they move the Court with request to pass a decree of divorce. It was further held that if the Court is held to have the power to make a decree solely based on the initial petition, it negates the whole idea of mutuality and consent for

divorce. It was held that mutual consent to the divorce is a *sine qua non* for passing a decree for divorce under Section 13B of the Act and that mutual consent should continue till the divorce decree is passed.

(10) In view of the law laid down by the Hon'ble Supreme Court in the abovesaid authority and the statutory provisions of Section 13B of the Act, in our opinion, the trial Court was not empowered to curtail the statutory period of six months while granting the decree of divorce by mutual consent, on the statement of the parties. As held by the Hon'ble Supreme Court, the waiting period of 6 to 18 months was intended to give time and opportunity to the parties to reflect on their move and seek advice from their relation and friends and in this transitional period, one of the parties may have a second thought and change his mind not to proceed with the petition. In the present case, without waiting for the statutory period of six months, and without giving the minimum waiting period of six months, the learned trial Court proceeded to grant decree of divorce by mutual consent on the statements of the parties, by preponing the date, thereby curtailing the minimum statutory period of six months. As referred to above, the Court was not empowered to do so and as such, the decree for divorce by mutual consent was passed by the trial Court contrary to the mandatory provisions of Section 13B of the Act and the law laid down by the Hon'ble Supreme Court in Smt. Sureshta Devi's case (*supra*).

(11) The two authorities, relied upon by learned counsel for the respondent-husband, in our opinion, would have no application to the facts of the present case. In 1986(2) PLR 608 (*supra*), the husband had filed the petition for divorce under Section 13 of the Act on 26th July, 1980 on various grounds. During the pendency of the petition on 29th May, 1984, a compromise was arrived at between the parties and on the basis of the said compromise, a decree for divorce was granted by the learned trial Court, in favour of the husband. Aggrieved against the same, the wife filed appeal in this Court. The matter was referred to a larger Bench on the question regarding maintainability of the appeal against the consent decree and could the marriage be dissolved by

a decree of divorce on the basis of compromise arrived at between the parties. A Division Bench of this Court, after considering various aspects of the case, held that the matrimonial Court could dissolve marriage by a decree of divorce on the basis of compromise arrived at between the parties, during the pendency of the divorce petition. In our opinion, the law laid down by the Division Bench in this authority would have no application to the facts of the present case. In any case, as referred to above, the divorce petition was filed on 26th July, 1980 and the compromise was arrived at between the parties on 29th May, 1984 and in this manner, it would be clear that the matrimonial litigation between the parties was pending for almost 4 years at the time when the parties had arrived at a compromise and decree for divorce was granted in favour of the husband on the basis of the said compromise.

(12) In AIR 2003, Punjab and Haryana, 179 (*supra*) (decided by one of us), the husband had filed a petition for the grant of divorce against the wife on the ground of cruelty. After hearing both the sides the learned Additional District Judge granted the decree of divorce. Aggrieved against the same, the wife filed appeal in this Court. During the pendency of the appeal, the parties arrived at a compromise and an application under Order 6 Rule 17, CPC, was filed seeking amendment of the petition converting it into a petition for divorce by mutual consent. The said amendment was allowed and after recording the statements of the parties, the marriage between the parties was dissolved by a decree of divorce by mutual consent, by curtailing the period of six months and placing reliance on the law laid down by a Division Bench judgment of this Court in Smt. Krishna Kheterpal's case (*supra*). In our opinion, the law laid down in this authority would have no application to the facts of the present case. As referred to above, in the reported case, the husband had filed a petition for divorce on the ground of cruelty. The said petition was contested by the wife. The learned Additional District Judge granted the decree of divorce in favour of the husband, *vide* decree dated 28th November, 1996. Aggrieved against the same, the wife filed appeal in this Court. The appeal remained pending for almost 6 years and it was only on 13th November, 2002 that the decree for divorce by mutual consent was granted on the application jointly filed by the parties seeking

amendment of the divorce petition and converting it into a petition for divorce by mutual consent under Section 13B of the Act. In our opinion, under such circumstances, the Court was certainly competent to grant the decree of divorce by mutual consent under Section 13B of the Act, since the matrimonial litigation between the parties remained pending for more than 6 months. However, the law laid down in this authority would have no application to the facts of the present case. As referred to above, in the present case for the first time the divorce petition with mutual consent was jointly filed by the parties on 1st October, 2002 and just on the 24th day thereof i.e. on 24th October, 2002, the marriage between the parties was dissolved by a decree of divorce under Section 13B of the Act which was just contrary to the provisions of Section 13B of the Act and the law laid down by the Hon'ble Supreme Court in Smt. Sureshta Devi's (*supra*).

(13) In view of the above, the present appeal deserves to be allowed and the judgment and decree passed by the trial Court, are liable to be set aside.

(14) In the normal course we would have sent the case back to the trial Court for deciding the petition under Section 13B of the Act afresh in accordance with law, since the said petition was decided by the trial Court without waiting for the statutory period of six months. However, in the present case, no useful purpose would be served in doing so, on two grounds ; firstly, 18 months period has already expired since the petition was initially filed on 1st October, 2002 and secondly, by filing the present appeal, the appellant-wife has already indicated that she is not interested in seeking dissolution of marriage by a decree of divorce by mutual consent. Under these circumstances, no useful purpose would be served in sending the case back to the trial Court for deciding the aforesaid petition under Section 13B of the Act, afresh.

(15) In view of the above, the present appeal is allowed, the judgment and decree, passed by the trial Court, are set aside and the divorce petition under Section 13B of the Act, is dismissed with no order as to costs.

R.N.R.