

Before K. Kannan, J.
RANJIT SINGH,—Appellant

versus

POONAM,—Respondent

FAO No. M-130 of 2011

27th April, 2011

Hindu Marriage Act, 1995—S. 13-B—Petition filed for divorce by mutual consent—After six months matter called for eliciting consent of parties—Wife making statement that she is not prepared to make statement on that day—Petition dismissed holding no consent of spouse—Challenge by husband that petition should not be dismissed as wife had not withdrawn the consent—Subsequently petition filed by wife for restitution of conjugal rights—Such subsequent event proving that wife unwilling to stand by terms of compromise for securing divorce by mutual consent—Subsequent event can be looked into—Appeal dismissed.

Held, that although the appeal would normally be examining only the validity or correctness of order passed, here a subsequent event which has taken place itself proved that the fact that the wife was not willing to stand by the terms of compromise entered between them for securing divorce by mutual consent. In this case although the dismissal of the petition was not appropriate by the court, for, it was passing an order without definite evidence that she was withdrawing from consent, the subsequent fact that the wife had filed an application for restitution of conjugal right itself would show that she was not willing to stand by agreement for divorce by mutual consent. If she was withdrawn the consent, it can not be ground for husband to contend that there had been a compromise between the parties and amounts have been paid for securing a divorce. It is possible under law that a person after agreeing to a divorce by compromise to resile from the same within 6 months and so long as there is no decree already passed, an action taken by the wife for restitution will be taken as an event that shows that she was unwilling to stand by the compromise and unwilling to suffer a decree of divorce by mutual consent.

(Para 5)

Bharat Bir Singh Sobti, Advocate, *for the appellant.*

K. KANNAN J. (ORAL)

(1) The appeal is against the dismissal of petition under Section 13-B of the Hindu Marriage Act. On a day, six months after the institution of petition, when the matter was called before the Court for eliciting the consent of both parties for a divorce by mutual consent, the wife gave a statement as follows :—

“I do not want to make the statement today u/s 13-B of HMA.”

(2) On this statement, the Court found that there had been no consent of spouse and proceeded to dismiss the petition.

(3) Learned counsel for the appellant-husband states that the trial Court could not have dismissed the petition without eliciting the definite case of withdrawal of consent by the wife. A mere statement that she was not prepared to make a statement on that day, could not have been taken as meaning that she was unwilling for divorce by mutual consent and therefore, the order passed by the trial court was erroneous.

(4) If the case had stopped when the statement was made by wife suggesting that there was a case of prevarication by the wife or there was definitely nothing possible for a Court to infer that she was not willing to stand by the averments in the petition for divorce by mutual consent, the appeal could have been perfectly maintained but the appellant himself has filed a subsequent event *viz.*, of an application filed by the wife under Section 9 of the Hindu Marriage Act seeking for restitution of conjugal rights. Even the application makes a reference to the fact that the application under Section 13-B was filed by both the parties but later, the petition was dismissed and therefore, who was moving an application for restitution of conjugal rights.

(5) Although the appeal would normally be examining only the validity or correctness of order passed, here a subsequent event which has taken place itself proved the fact that the wife was not willing to stand by the terms of compromise entered between them for securing a divorce by mutual consent. All subsequent events are not relevant and there are several decisions coming in various jurisdictions as to when subsequent event could

still be taken note of by the appellate Court (please see **Parents Association of Students versus M. A. Khan (1)**, relevance of subsequent events in contempt proceedings ; **Dulari Exports Ltd. versus HSIDC Ltd, (2)**, relevance of subsequent event for equitable reliefs ; **M. Mohd. Basheer versus State of Kerala (3)**, in contractual matters ; **Shipping Corporation of India versus Machado Bros (4)**, subsequent event that renders suit infructuous ; **Ramesh Kumar versus Keshoram (5)**, in rent control proceedings ; **Bharpur Singh versus Shamsher Singh (6)**, in family and personal law). These judgments are merely illustrative and not exhaustive. In this case although the dismissal of the petition was not appropriate by the Court, for, it was passing an order without definite evidence that she was withdrawing from consent, the subsequent fact that the wife had filed an application for restitution of conjugal rights itself would show that she was not willing to stand by agreement for divorce by mutual consent. If she has withdrawn the consent, it cannot be a ground for husband to contend that there had been a compromise between the parties and amounts have been paid for securing a divorce. It is possible under law that a person after agreeing to a divorce by compromise to resile from the same within 6 months and so long as there is no decree already passed, an action taken by the wife for restitution will be taken as an event that shows that she was unwilling to stand by the compromise and unwilling to suffer a decree of divorce by mutual consent.

(6) The appeal is, therefore, dismissed although on different grounds than what was referred to in the impugned judgment.

(7) The observation made by this Court relating to the inconclusive nature of effect of compromise is confined to the proceedings for divorce by mutual consent only and the appellant husband is entitled to rely on any of the terms of the alleged compromise in defence in the application for restitution of conjugal rights filed by the wife against him, if the law so permits.

J. THAKUR

- (1) (2009) 2 641
- (2) (2009) 17 S.C.C. 526
- (3) (2003) 6 S.C.C. 159
- (4) (2004) 11 S.C.C. 168
- (5) 1992 Supp. (2) S.C.C. 623
- (6) (2009) 3 S.C.C. 68