
Before M.L. Singhal, J

MOHINDER PAL KAUR—*Petitioner*

Versus

GURMIT SINGH—*Respondent*

C.W. No. 1196 OF 2001

1st June, 2001

Hindu Marriage Act, 1955—S.13-B(2)—Husband & wife filing joint petition u/s 13-B for dissolution of marriage—S.13-B(2) provides a period of waiting from 6 to 18 months for passing a decree for divorce with mutual consent—Whether minimum waiting period of 6 months can be curtailed in a freshly instituted petition—Held, no—However, this period can be curtailed in cases where divorce proceedings pending since long—Petition dismissed.

Held, that providing 6 months waiting period cannot be viewed as being without any purpose by the Parliament. The intention of the Parliament was that the institution of marriage should last and it should not be ended in haste and further the intention of the parliament was that neither party was able to take advantage over the other in the matter of grant of mutual divorce. In a period of 6 months after the institution of petition for mutual divorce, the parties can deliberate over the entire matter dispassionately and can come to the conclusion whether they should continue with this marriage or they should put an end to this marriage. In this period of 6 months, parties can consult their relations, sociologists and friends and can take their advice whether or not divorce would be conducive to the peaceful and healthy living. Thus, the waiting period of 6 months provided in Section 13-B (2) of the Hindu Marriage Act cannot be curtailed in altogether a freshly instituted petition for mutual divorce u/s 13-B of the Hindu Marriage Act. This period can, however be curtailed if divorce proceedings have been pending between them since long and they and their relations have strained every nerve to save their marriage.

(Paras 18 & 19)

Pawan Kumar Gupta, Advocate—for the petitioner

H.V. Rai, Advocate

Sanjay Majithia, Advocate

(Amicus Curie-appointed by the Court)—for the respondent

JUDGMENT

M.L. SINGHAL, J

(1) This is a joint petition filed on 5th January, 2001 under section 13-B of the Hindu marriage Act by Mohinder Pal Kaur (wife) and Gurmit Singh (husband) for the dissolution of their marriage by decree of divorce which the learned District Judge, Ludhiana has refused to allow prior to 5th July, 2001 by curtailing the six months period as provided in section 13-B(2) of the Hindu Marriage Act. It is this order dated 5th February, 2001 which has been called in question by the wife through this revision.

(2) In support of the submission that the waiting period of 6 months provided by the Parliament in section 13-B(2) of the Hindu marriage Act can be curtailed, the learned counsel for the petitioner has drawn my attention to *Gurdhian Singh v. Gurmeet Kaur (1)* Notice of motion was given to the respondent. Shri H.V. Rai, Advocate accepted notice on behalf of the respondent. So that this point, whether the waiting period of 6 months as provided by the Parliament in section 13-B(2) of the Hindu Marriage Act, could be curtailed, is, decided authoritatively, Shri Sanjay Majithia, Advocate was requested to assist the court in this behalf. Section 13-B of the Hindu Marriage Act reads as follows :-

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.

(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.

(3) Learned counsel for the petitioner submitted that the court can order the curtailing of this 6 months period to a lesser period in fit cases where the court feels that the parties are mature enough and they have taken the decision to put an end to their marriage and free themselves from the shackles of marriage without any pressure, coercion or fraud etc. and after fully comprehending the pros and cons of this decision. It was submitted that this period of 6 months can be brought down to a lesser period and the court can order the dissolution of the marriage of the parties with their mutual consent under section 13-B of the Hindu marriage Act where the court feels that the parties have taken a conscious decision to dissolve their marriage by mutual consent and that neither party has been induced into this decision through fraud, coercion, undue influence or misrepresentation. He submitted that the court could order the dissolution of the marriage of the parties earlier than 6 months of the date of institution of this petition for divorce with mutual consent so that they did not waste any time and rather planned their future course of starting life denovo. He submitted that this period of 6 months could be brought down in case where the court feels that there was no use flogging a dead horse and that marriage be knocked out right now and the parties freed from the shackles of marriage so that they could plan their future course of starting life denovo and thus rehabilitating themselves.

(4) We have to find out the intention of the parliament when the parliament used the words in sub-section 2 of section 13-B of the Hindu Marriage Act "not earlier than 6 months after the presentation of the petition" referred to in sub-section 1 and "not later than 18 months after the said date".

(5) In *Smt Sureshta Devi v. Om Parkash (2)* the Hon'ble Supreme Court has laid down that "the expression "living separately" connotes not living like husband and wife. It has no reference to the place of living. The parties may be living under the same roof by force of circumstances, and yet they may not be living as husband and wife. The parties may be living in different houses and yet they could live as husband and wife. What seems to be necessary is that they have no desire to perform marital obligations and with that mental attitude they have been living separately for a period of one year immediately preceding the presentation of the petition. The use of the expression

having not been able to live together in section 13-B indicates concept of broken down marriage and no possibility of reconciliation. A party to a petition for divorce by mutual consent under section 13-B of the Hindu Marriage Act can unilaterally withdraw the consent and the consent once given is not irrevocable. Section 13-B is in pari-material with section 28 of the Special Marriage Act, 1954.

(6) From the analysis of the section, it will be apparent that the filing of the petition with mutual consent does not authorise the court to make a decree for divorce. There is a period of waiting from 6 to 18 months. This interregnum is obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The spouse may not be a party to the joint motion under sub-sec. (2). There is nothing in the section which prevents such course. The Section does not provide that if there is a change of mind it should not be by one party alone, but by both. It cannot be assumed that the crucial time for giving mutual consent for divorce is the time of filing the petition and not the time when they subsequently move for divorce decree. At the time of the petition by mutual consent, the parties are not unaware that their petition does not by itself snap marital ties. They know that they have to take a further step to snap marital ties. Sub-sec. (2) of Section 13-B is clear on this point. What is significant in this provision is that there should also be mutual consent when they move the court with a request to pass a decree of divorce. Secondly, the Court shall be satisfied about the bona fides and the consent of the parties. If there is no mutual consent at the time of the enquiry, the court gets no jurisdiction to make a decree for divorce. If the view is otherwise, the Court could make an enquiry and pass a divorce decree even at the instance of one of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent.

(7) Sub-sec. (2) requires the Court to hear the parties which means both the parties. If one of the parties at that stage says that "I have withdrawn my consent". or "I am not a willing party to the divorce", the Court cannot pass a decree of divorce by mutual consent. 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. Mutual consent to the divorce is *sine qua non* for passing a decree for divorce under Section 13-B. Mutual consent should continue till the divorce decree is passed. It is a positive requirement for the Court to pass a decree of divorce. The consent must continue to decree nisi and must be valid subsisting consent when the case is heard."

(8) In this case, Smt. Sureshta Devi had been married to Om Parkash respondent on 21st November, 1968. On 8th January, 1985, they moved petition under section 13-B of the Hindu Marriage Act for divorce with mutual consent. On 9th January, 1985, the court recorded the statement of the parties and left the matter there. On 15th January, 1985, the wife filed an application in the court, inter-alia, stating that her statement dated 9th January, 1985 was obtained under pressure and threat of the husband and she was not even allowed to see or meet her relations to consult them before filing the petition for divorce. Nor they were permitted to accompany her to the Court. She said that she would not be party to the petition and prayed for its dismissal. District Judge dismissed the petition for divorce. On appeal, the High Court reversed the order of the District Judge and granted a decree for dissolution of the marriage by mutual consent. High court observed that the spouse who has given consent to a petition for divorce cannot unilaterally withdraw the consent and such withdrawal, however, would not take away the jurisdiction of the Court to dissolve the marriage by mutual consent, if the consent was otherwise free. The High Court also recorded a finding that the wife gave her consent to the petition without any force, fraud or undue influence and therefore she was bound by the consent. Wife went in appeal to the Hon'ble Supreme Court. In the appeal, the question posed before the Hon'ble Supreme Court was whether the decree for dissolution of marriage by mutual consent granted by the High Court was valid and whether a party to a divorce under Section 13-B could unilaterally withdraw the consent and whether consent once given was irrevocable.

(9) In para 13 of the report, the Hon'ble Supreme Court has observed that from the analysis of the section, it will be apparent that the filing of the petition with mutual consent does not authorise the court to make a decree for divorce. There is a period of waiting from 6 to 18 months. This interregnum is obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The spouse may not be a party to the joint motion under subsec. (2). There is nothing in the section which prevents such course. The Section does not provide that if there is a change of mind it should not be by one party alone, but by both. It cannot be assumed that the crucial time for giving mutual consent for divorce is the time of filing the petition and not the time when they subsequently move for divorce decree. At the time of the petition by mutual consent, the parties are not unaware that their petition does not by itself snap marital ties. They know that they have to take a further step to snap marital ties.

Sub-sec. (2) of Section 13-B is clear on this point. What is significant in this provision is that there should also be mutual consent when they move the court with a request to pass a decree of divorce. Secondly, the Court shall be satisfied about the *bona fide* and the consent of the parties. If there is no mutual consent at the time of the enquiry, the court gets no jurisdiction to make a decree for divorce. If the view is otherwise, the Court could make an enquiry and pass a divorce decree even at the instance of one of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent.

(10) Sub-sec. (2) requires the Court to hear the parties which means both the parties. If one of the parties at that stage says that "I have withdrawn my consent", or "I am not a willing party to the divorce", the Court cannot pass a decree of divorce by mutual consent. 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. Mutual consent to the divorce is *sine qua non* for passing a decree for divorce under section 13-B. Mutual consent should continue till the divorce decree is passed. It is a positive requirement to the court to pass a decree of divorce. The consent must continue to decree nisi and must be valid subsisting consent when the case is heard.

(11) Thus it is clear that mutual consent must continue till divorce decree is passed. Divorce decree cannot be passed till the expiry of 6 months period or if 6 months period has expired and the parties do not come out with mutual statement dissolving their marriage with their mutual consent for divorce, the divorce petition can be dragged to another period of one year. During that period of one year, either party can withdraw the consent and put an end to the divorce petition or both the parties can consent to the grant of divorce and the divorce will be granted with mutual consent. Question of passing a decree for divorce with mutual consent under section 13-B of the Hindu Marriage Act will arise only on the expiry of 6 months period and not earlier. This is the underlying ratio of this judgment of the Hon'ble Supreme Court.

(12) In *Kanchan Devi vs. Promod Kumar Mittal and another* (3) the Hon'ble Supreme Court has laid down that where the parties have been living separately for a period of more than 10 years and the marriage between the parties is found to be irretrievably broken down and there being no possibility of reconciliation and parties have mutually agreed that the marriage should be dissolved subject to the payment of Rs. 60,000/- by the husband to the wife, the marriage was dissolved by the Hon'ble Supreme Court in exercise of the powers vesting in it under

Article 142 of the Constitution of India. In this case, the Hon'ble Supreme Court put an end to the marriage of the parties with mutual consent before the expiry of 6 months period. While doing so, Hon'ble Supreme Court took this fact into account that the marriage between the parties was solemnised on 18th April, 1973 and they had been living separately for a period of more than 10 years and their marriage had irretrievably broken down and there was no prospect of reconciliation between the parties and parties had mutually agreed that the marriage should be dissolved subject to the payment of Rs. 60,000/- by the husband to the wife. On 7th December, 1995, Hon'ble Supreme Court recorded the statements of the parties which are to the effect that their marriage has irretrievably broken down and their marriage be put an end to on the husband's paying Rs. 60,000/- to the wife. Payment of Rs. 60,000/- by the husband to the wife shall put an end to every dispute between them. In this case, the Hon'ble Supreme Court invoked the powers vesting in it under Article 142 of the constitution of India. While exercising powers vesting in it under Article 142 of the Constitution of India, the Hon'ble Supreme Court can pass any order to secure the ends of justice. Article 142 reads as follows :-

142 Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.

- (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
- (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

(13) So far as this court is concerned, there is no power inhering in this court at par with the power inhering in the Supreme Court by virtue of Article 142 of the Constitution of India and therefore, this court cannot curtail this period of 6 months. Even otherwise, there the parties had been living separate from each other for the last more than 10 years and there had been no reconciliation between them and their

marriage had completely broken down and the Hon'ble Supreme Court thought that it was no use flogging a dead horse any further and it would be better to put an end to their marriage so that there was peace of mind to them.

(14) In *Anita Sabharwal v. Anil Sabharwal* (4) Hon'ble Supreme Court dissolved the marriage of the parties under section 13-B of the Hindu Marriage Act when all hopes to unite them together had failed although it was a simple petition under section 13 of the Hindu Marriage Act. A simple petition under section 13 of the Hindu Marriage Act was allowed to be treated as one under section 13-B of the Hindu Marriage Act and divorce was granted with mutual consent although the statutory period of 6 months had not expired. Again, here the parties had been married about 14 years ago. They had spent the prime of their life in acrimony and litigating. The divorce petition had been filed under section 13 of the Hindu Marriage Act by the husband in the year 1994 in the court of Additional District Judge, Delhi. Wife filed transfer application before the Hon'ble Supreme Court seeking the transfer of the said case to the Family Court, Mumbai. During the pendency of the transfer petition, parties as well as their counsel had on 9th September, 1996 put on record a compromise deed wherein they had agreed to get divorce by mutual consent. Strictly speaking, the preconditions of such claim had not been laid inasmuch as a petition to that effect has not been filed under section 13-B of the Hindu Marriage Act before the first matrimonial court, and that the statutory period of 6 months had not even commenced. Hon'ble Supreme Court observed that it stood established beyond doubt when they summoned the original file of divorce case that the parties were married about 14 years ago and had spent the prime of their life in acrimony and litigating and it was the time that their mutuality bears some fruit in putting them apart. Divorce case was taken by the Hon'ble Supreme Court on their own file and allowed the parties to bring on record the compromise deed arrived at jointly between them. In terms therewith a sum of Rs. 7 lacs stood paid to the wife by means of 3 separate bank drafts of Rs. 2 lacs, 2 lacs and 3 lac. Recurring provision had been made therein for their children's education and visiting rights of the father. Hon'ble Supreme Court questioned the parties and they were eager to dissolve the matrimonial tie so that they could rearrange their lives. Hon'ble Supreme, in the spirit of section 13-B of the Hindu Marriage Act and in view of the fact that all hopes to unite them together had gone, granted to the parties divorce by a decree of dissolution by mutual consent to end their prolonged unhappiness.

(15) It would bear repetition that this principle cannot be invoked in the case in hand as there the parties had got enough time to try their marriage and it was when their marriage had failed altogether that the Hon'ble Supreme Court put an end to their marriage.

(16) In *Krishna Kumari v. Ashwani Kumar* (5) a learned Single Judge of this court held that the waiting period of 6 to 18 months provided in section 13-B(2) of the Hindu Marriage Act so as to enable the parties to reconcile by seeking advice and assistance of their relations and friends is not mandatory but is directory in nature. Court has to satisfy itself that the parties have consented freely for mutual divorce without duress, misrepresentation, force or fraud and there is no chance of reconciliation. If the parties were litigating for long time and all the efforts at reconciliation have proved abortive, it will not be in the interest of justice and in accordance with the spirit of the provisions of the Statute to deny the relief of condonation of waiting period." Suffice it to say, these observations were made by the learned Single Judge where the parties had been already litigating for more than 4 years and they had lived together only for 2 months after marriage and there were no chances of conciliation. Decree of divorce by mutual consent was granted with immediate effect by condoning the waiting period under section 13-B of the Hindu Marriage Act. Smt. Krishna Kumari was married to Ashwani Kumar on 27th September, 1990. They lived together till 26th November, 1990. Since then, they had been living separately. In the divorce petition, the wife pleaded cruelty and desertion. Her divorce petition was dismissed on 17th October, 1995. Wife filed appeal. During the pendency of appeal, on 29th July, 1996 the parties filed joint petition under section 13-B of the Hindu Marriage Act read with section 151 CPC for converting the proceedings under section 13 of the Hindu Marriage Act to proceedings under section 13-B of the Hindu Marriage Act. In this petition, they alleged that due to temperamental differences, they have separated. Learned Judge allowed the conversion of the petition for divorce into one under section 13-B of the Hindu Marriage Act and granted mutual divorce by waiving the waiting period of 6 months. Their statements were recorded. Both the parties deposed on oath that they had agreed to obtain divorce by mutual consent and they had signed the compromise after understanding its contents. Wife admitted that she had received Rs. 25,000 from her husband in full and final settlement of her claim against him. She also admitted that she has got FIR No. 631 registered against her husband on 28th December, 1990 under sections 406/498-A IPC. She agreed that she would get this FIR quashed by the High Court.

Both the counsel stated that parties were married on 27th September, 1990. They lived together only till 26th November, 1990. Since then they had been living separately. Many attempts had been made by both the sides for reconciliation. Even when the divorce petition was pending before the matrimonial court, an attempt was made for reconciliation but with no results. After about 6 years of living separately, they had decided that they should obtain divorce by mutual consent. They also argued that considering the age group of the parties, it was in their interest if divorce was granted to them immediately instead of waiting for 6 months. Both the counsel argued that if divorce was granted to them immediately without loss of any time further, parties might enter into a fresh matrimonial alliance and could resettle themselves and thus their broken homes could be re-established. With the learned Single Judge, this consideration weighed and the period of 6 months was allowed to be waived and decree of divorce on the basis of mutual consent was granted to the parties.

(17) It is thus clear that 6 months waiting period can be brought down in cases where divorce petition is already pending for more than six months and effort for reconciliation had been made earlier but without any success.

(18) In this case, thus, the prayer of the parties for the grant of mutual divorce to them under section 13-B of the Hindu Marriage Act in a petition filed on 5th January, 2001 could not be granted prior to 5th July, 2001. Providing 6 months waiting period cannot be viewed as being without any purpose by the Parliament. The intention of the Parliament was that the institution of marriage should last and it should not be ended in haste and further the intention of the Parliament was that neither party was able to take advantage over the other in the matter of grant of mutual divorce. In a period of 6 months after the institution of petition for mutual divorce, the parties can deliberate over the entire matter dispassionately and can come to the conclusion whether they should continue with this marriage or they should put an end to this marriage. In this period of 6 months, parties can consult their relations, sociologists and friends and can take their advice whether or not divorce would be conducive to their peaceful and healthy living.

(19) For the reasons given above, I am of the opinion that the waiting period of 6 months provided in section 13-B(2) of the Hindu Marriage Act cannot be curtailed in altogether a freshly instituted petition for mutual divorce under section 13-B of the Hindu Marriage Act. This period can, however, be curtailed if divorce proceedings have been pending between them since long and they and their relations

have strained every nerve to save their marriage and bring about reconciliation between them and they have felt that their marriage is a dead horse and it is no use flogging a dead horse and they pray that petition for divorce under section 13 of the Hindu Marriage Act be converted into one under section 13-B of the Hindu Marriage and they can be allowed to do so and that petition under section 13 B of the Hindu Marriage Act can be allowed forthwith without waiting any further. So, this revision is dismissed.

R.N.R.

Before N.K. Sodhi & R.C. Kathuria, JJ

DAYANAND MEDICAL COLLEGE AND HOSPITAL,
LUDHIANA—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS—*Respondents*

C.W.P. No. 698 of 2001

18th June, 2001

Constitution of India, 1950—Arts. 15(4) & 226—Post Graduate Medical Education Regulations, 2000—Reg. 9—Indian Medical Council Act, 1956—Ss. 20 & 33—Notification dated 5th January, 2001 issued by the State of Punjab—Admission to the Post graduate Medical Courses—Reg. 9 of the 2000 Regulations prescribes a minimum of 50% marks in the entrance test as the eligibility for admission—Govt. by issuing a notification lowering the minimum percentage of marks for eligibility to 40% and also prescribing reservation for various categories in admission—Regulations do not provide for any kind of reservation and reducing of minimum qualifying marks in any case—State Govt. has no power to make reservations for admission and the reservation, if any, could be made by the Council alone—No reservation for admissions in Postgraduate Medical Courses provided by the Council—Action of the State Govt. lowering the qualifying marks and providing reservation for admissions illegal and violative of the Regulations—Writ allowed, impugned notification quashed while directing the University to hold fresh counselling and admit students in accordance with the Regulations.

Held, that a reading of Regulation 9 makes it abundantly clear that admissions have to be made on merit and the best from amongst