

Before I. S. Tiwana, J.

JAI BHAGWAN,—Appellant.

versus

ANITA RANI,—Respondent.

First Appeal from Order No. 137-M of 1981.

September 2, 1983.

*Hindu Marriage Act (XXV of 1955)—Sections 13-B and 14—Petition for divorce for consent filed within one year of marriage—Permission for filing the petition within such time not obtained under section 14(1)—Decree under section 13-B passed dissolving the marriage—Such decree—Whether a nullity—Requirements for the passing of a consent decree—Procedure of section 13-B not adhered to—Decree of divorce—Whether valid.*

*Held*, that it is patent from a reading of the opening words of section 13-B of the Hindu Marriage Act, 1955 that the same is subject to the provisions of section 14 of the Act. Sub-section (1) of section 14 lays down that notwithstanding anything contained in the Act, no Court shall be competent to entertain any petition for dissolution of a marriage by a decree of divorce unless on the date of the presentation of the petition one year had elapsed from the date of the marriage. This sub-section lays emphasis more on the competence of the Court itself to entertain a petition for divorce before the expiration of one year than on the right of any party to the marriage to file such a petition. In this situation it is manifest that a decree passed as a result of the petition entertained in violation of this sub-section is essentially a nullity.

(Para 3)

*Held*, that the essential requirements for passing a decree of divorce of consent are three, namely, (a) the husband and wife have been living separately by at least for one year prior to the petition; (b) they have not been able to live together whatever may be the reasons and (c) they have mutually agreed that the marriage

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, on the ground that they have been living separately for a period of one year or more

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(iv) the Court is satisfied that the averments made in the petition are true.

From an analysis of the section it is clear that both the parties must be present at the time of the passing of the decree and confirm the petition. In addition to that the Court may, if it thinks fit, make any further or necessary enquiries. When this procedure is not adopted and the parties are not personally present, the decree obtained is not legal and cannot be enforced.

(Para 3).

*First Appeal from the decree of the Court of the Additional District Judge (I) Kurukshetra, dated the 8th day of September, 1981 allowing the application and dissolving the marriage between the parties by a decree of divorce by mutual consent.*

C. B. Goel, Advocate, for the Appellant.

K. D. Verma, Advocate, for the Respondent.

#### JUDGMENT

I. S. Tiwana, J. (oral)

(1) The appellant-husband impugns the decree passed under section 13-B of the Hindu Marriage Act (for short, the Act). He claims that though the decree in question is the result of a fraud played upon him, yet even if he is to be disentitled to raise this plea in these proceedings, still the decree is violative of the very provision under which it purports to have been passed. The argument is that no petition under section 13-B of the Act can be maintained within a period of one year from the date of marriage. It is not a matter of dispute that parties to this litigation were married on October 22, 1980 and the present petition for divorce was presented on March 2, 1981, that is, within less than five months of the date of marriage.

(2) Having heard the learned counsel for the parties in the light of the provisions of sections 13-B and 14 of the Act I find that the appeal deserves to succeed. The relevant parts of these sections read as follows:—

“13-B. 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, 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.

14. No petition for divorce be presented within three years of marriage.

- (i) Notwithstanding anything contained in this Act, it shall not be competent for any Court to entertain any petition for dissolution of marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage:

Provided that the court may upon application made to it in accordance with such rules as may be made by the High Courts in that behalf allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition that petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the Court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition without prejudice to any petition which may

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be brought after the expiration of the said one year upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) ... ..”

(3) It is patent from the opening words of the former section that the same is subject to the latter, being a part of the Act. Sub-section (1) of the latter section lays down that notwithstanding anything contained in the Act, no Court shall be competent to entertain any petition for dissolution of a marriage by a decree of divorce unless on the date of the presentation of the petition one year had elapsed from the date of the marriage. This sub-section lays emphasis more on the competence of the Court itself to entertain a petition for divorce before the expiration of one year than on the right of any party to the marriage to file such a petition. In this situation it is manifest that a decree passed as a result of the petition entertained in violation of this sub-section is essentially a nullity. It is not the case of the respondent that any permission in terms of the proviso to sub-section (1) of section 14 of the Act was taken from the trial Court in order to maintain the petition. I am, therefore, of the considered view that the trial Court could not possibly entertain the petition for divorce within one year of the date of marriage much less when there was not even an allegation therein that the parties had been living separately for a period of one year or more and were unable to live together under any circumstances. It is needless to say that the essential requirements for passing a decree of divorce of consent are three, namely, (a) the husband and wife have been living separately by at least for one year prior to the petition; (b) they have not been able to live together whatever may be the reason; and (c) they have mutually agreed that the marriage should be dissolved. In addition to this, the procedural requirements in terms of section 13-B are that:—

- (i) Both the husband and wife should file a joint petition;
- (ii) At least six months but not more than 18 months must elapse between the filing of the petition and the passing of the decree;
- (iii) The Court should be satisfied on hearing the parties that the marriage was solemnised; and
- (iv) the Court is satisfied that the averments made in the petition are true.

From this analysis of the section to me it appears clear that both the parties must be present at the passing of the decree and confirm the petition. In addition to that the Court may, if it thinks fit, make any further or necessary enquiries. No such procedure appears to have been adopted in this case, nor the same is borne out from the record. On the other hand it is clear from the records of the case that neither the appellant was personally present at any stage of the case nor was he examined by the Court.

(4) For the reasons recorded above, I allow this appeal and while setting aside the judgment and decree in question, dismiss the petition as incompetent but with no order as to costs.

*N.K.S.*

*Before J. M. Tandon, J.*

**SEWAK DASS,—Petitioner.**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents.**

*Civil Writ Petition No. 637 of 1977*

September 8, 1983.

*Sikh Gurdwara Act (XXIV of 1925)—Section 7—Application under section 7(1) by a number of Sikh worshippers—Notification issued by the Government under sub-section (3) of section 7—Notice under section 7(4) to interested parties after the issuance of the notification—Notification—Whether valid—Notification issued long after the compliance of sub-sections (1) and (2) of section 7—Whether could be quashed on the ground of delay.*

*Held, that there is nothing in sub-section (4) of section 7 of the Sikh Gurdwaras Act, 1925 to suggest that service of the notice in terms thereof could be effected on the interested party only after publication of the notification under section 7(3). Thus, where the notice was served on the interested party before the publication of the notification the latter cannot be said to be invalid.*

(Para 3)

*Held, that under sub-section (3) of section 7 of the Act it is obligatory for the State Government to issue and publish a notification after the compliance of the provisions contained in sub-sections (1)*