

that in every case when a matter has gone to the civil Court, criminal proceedings must automatically end, or be not allowed to go on, for if this were to happen, it would be putting premium over civil Courts than criminal Courts. That is an undesirable result. Multiplicity of litigation is not to be encouraged as there should be no public wastage of time over meaningless and parallel litigation. It is thus the essence of the matter which is to be seen and not the form. Thus, I am of the considered view that in the instant case, the Sub-Divisional Magistrate, Rajpura unnecessarily and illegally shed of his jurisdiction in a case where his jurisdiction ought to have been exercised. Accordingly, this petition succeeds and the impugned order is quashed. The proceedings are restored to his file at the stage at which they were shut out. They are ordered to be continued therefrom. Parties through their counsel are directed to put in appearance before the Sub-Divisional Magistrate on 14th August, 1985.

H.S.B.

Before Surinder Singh, J.

SHARAN KUMAR,—Petitioner.

versus

SUNITA,—Respondent.

Civil Revision No. 2789 of 1985

September 21, 1985.

*Hindu Marriage Act (XXV of 1955)—Section 13 B—Joint petition presented under Section 13 B—Statements of the spouses not recorded at the time of presentation of the petition—Judge adjourning the case for another six months to “rethink” over the matter—Order of Judge—Whether valid—Section 13(B)(1)—Whether envisages the recording of statements of the parties at the time of filing of the petition.*

*Held.* that Section 13 B of the Hindu Marriage Act, 1955, makes no provision for the recording of the statements of the parties at the time of the filing of the joint petition and merely because their statements are not so recorded they could not have been denied the relief of Divorce. After the expiry of the period of six months from the first date of hearing in the joint petition the case is to be taken up as provided under sub-section (2) of Section 13 B and it is on that date that the court is to be satisfied, after hearing the parties and after making such inquiry as it thinks fit, that the marriage be

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dissolved. Therefore, the order of the Judge adjourning the case for another six months in order to enable the parties to rethink over the matter is not valid as the recording of the statements of the parties at the time of the filing of the petition is not envisaged under Section 13 B (1) of the Act.

(Para 1).

*Civil Revision from the order of the Court of the Additional District Judge, Ludhiana, dated 22nd day of August, 1985 adjourning the petition of petitioners for 24th February, 1986.*

R. S. Cheema, Advocate and Rajiv Bhalla, Advocate, for the Petitioner.

JUDGMENT

(1) This is a joint Revision Petition preferred by both the spouse against the order passed by the Additional District Judge, Ludhiana, in a joint petition filed by them under section 13B of the Hindu Marriage Act, 1955, praying for a Decree of Divorce by mutual consent. The learned Additional District Judge has observed in the impugned order that at the time of presentation of the petition, the statements of the parties had not been recorded and on this ground, by means of the impugned order, he adjourned the case for another six months with the observation that the parties given time to 're-think' over the matter. Such a procedure is not envisaged under the law. Section 13B (1) makes no provision for the recording of the statements of the parties at the time of the filing of the joint petition and merely because their statements were not so recorded, they could not have been denied the relief of Divorce. After the expiry of the period of six months from the first date of hearing in the joint petition, the case has to be taken up as provided under sub-section (2) of section 13B and it is on that date that the Court is to be satisfied, after hearing the parties and after making such inquiry as it thinks fit, that the marriage be dissolved. In the present case, both the spouses made separate statements before the learned Additional District Judge, to the effect that they could not live together and that they had mutually agreed to the dissolution of their marriage. Hardly any other material was necessary for the satisfaction of the Court in this behalf.

(2) In view of what has been observed above, the impugned order passed by the learned Additional District Judge, Ludhiana, on August 22, 1985, is, therefore, unsustainable and is set aside. A

Decree of Divorce by mutual consent is passed in favour of the parties. Their marriage stands dissolved forthwith.

(3) The Revision Petition is disposed of accordingly.

H.S.B.

Before J. V. Gupta, J.

HARBANS LAL AND OTHERS,—*Petitioners.*

*versus*

INDER CHAND AND OTHERS,—*Respondents.*

Civil Revision No. 1809 of 1985

November 18, 1985.

*Code of Civil Procedure (V of 1908)—Order 22 Rules 5 and 9 and Order 43 Rule 1(k)—Application filed to bring on record legal representatives of a deceased plaintiff—Application dismissed and suit also dismissed as having abated—Appeal against such orders—Whether maintainable.*

*Held*, that where the trial Court dismissed the suit as having abated as a consequence of the application for bringing the legal representatives on record having been dismissed, the appeal is maintainable against the orders passed by the Court. It has been specifically provided in Rule 1(k) of Order 43 of the Code of Civil Procedure 1908 that an appeal would lie against an order passed under Order 22 Rule 9 refusing to set aside abatement or if the suit has been dismissed as abated. Rule 9 of Order 22 clearly contemplates that where the suit abates or is dismissed under this order, no fresh suit shall be brought on the same cause of action and such an order dismissing the suit as abated has been made appealable under Order 43 rule 1(k). Thus, for all intents and purposes the order passed by the trial Court dismissing an application of the legal representatives of the plaintiff and the consequent dismissal of the suit as having abated was an order under Rule 9 of Order 22.

(Para 3).

*Petition under section 115 C.P.C. for Revision of the order of the Court of Shri S. S. Sohal, Additional District Judge, Patiala dated 11th March, 1985 reversing the order of Shri U. S. Momi, P.C.S. Sub Judge, IInd Class, Rajpura dated 8th June, 1982 accepting the appeal and setting aside the impugned orders appealed against and remanding the case to the trial court i.e. his successor as Mr. Momi now stands*