

Before : S. S. Sodhi, J.
 COURT ON ITS OWN MOTION,—Appellant.
versus
 RAKESH GARG AND ANOTHER,—Respondents.

Civil Revision No. 3419 of 1991.

29th November, 1991.

(1) *Hindu Marriage Act (25 of 1955)—S. 13B(2)—Decree for divorce by mutual consent—No motion to be entertained or granted until six months have elapsed since date of presentation of petition—A decree granted disregarding provisions to be treated as void.*

Held, that there can thus be no escape from the conclusion that no motion for a decree for divorce, by mutual consent, under S. 13-B of the Act, can be entertained or granted until at least six months have elapsed from the date of the presentation of the petition for divorce on this ground. Any decree for divorce granted in disregard of this provision cannot, but be treated as void.

(Para 13)

(2) *Hindu Marriage Act (25 of 1955)—S. 13-B (2)—Decree of divorce granted void—Present proceedings to be treated as continuation of original proceedings—Husband remarried—Six months have elapsed since presentation of petition—Parties deemed to have been granted decree for divorce by mutual consent with effect from date when period of six months elapsed from presentation of petition.*

Held, that with the decree for divorce by mutual consent granted to the parties being void, the present proceedings must, in the circumstances, be treated as a continuation of the original proceedings. So considered, regard must also be had to the change, in the meanwhile, in the situation of the parties here, namely; that after the decree for divorce had been granted and before the notice was ordered by this court to issue to them, the petitioner remarried on September 12, 1991. Keeping the subsequent event of obvious material significance in view, as also the further fact that more than six months have, by now, since elapsed from the presentation of the petition for divorce, and the parties having lived apart ever since and still seek this relief, it would now clearly be in the interests of justice that the parties be deemed to have been granted a decree for divorce by mutual consent with effect from the date when the period of six months had elapsed since the presentation of the petition for divorce by them.

(Para 14)

Civil Revision from the order of the Court of Shri M. S. Lobana, Addl. District Judge, Chandigarh dated the 14th January, 1991 allowing the petition and dissolving the marriage of the parties by a decree of divorce by mutual consent with immediate effect leaving the parties to bear their own costs.

Claim : Petition for dissolving of marriage by a decree of divorce upon section 13(3) of Hindu Marriage Act by mutual consent.

Claim in Revision : For reversal of the order of lower court.

Hemant Kumar, Advocate for Rakesh Garg, Advocate, for the petitioner.

V. P. Gupta, Advocate, for the respondent.

JUDGMENT

S. S. Sodhi, J.

The matter here concerns the grant of a decree for mutual divorce under Section 13B of the Hindu Marriage Act, 1955 (herein-after referred to as 'the Act'), or to be more precise, the time that must elapse between the filing of a petition seeking such relief and the grant of it.

(2) A reference to the record shows that the petition for divorce by mutual consent under Section 13-B of the Act was filed in this case on December 6, 1990. It came up before the Court of the Additional District Judge, Chandigarh on December 8, 1990, when it was adjourned to January 14, 1991, for the presence of the parties. On that day, that is, January 14, 1991, after recording the statements of the parties, a decree for divorce by mutual consent was granted to them as prayed for.

(3) The provisions of Section 13-B of the Act, read as under:—

“(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."

(4) It will be seen that a definite time-frame has been stipulated in this statutory provision for a petition for the grant of a decree for divorce by mutual consent being moved and the grant of it. Disregard of such time-frame being the conspicuous feature of the case here the decree having been granted well before six months had elapsed from the date of the presentation of the petition. The grant of it was thus clearly contrary to the provisions of sub-section (2) of Section 13-B of the Act.

(5) Further it deserves note that the petition for divorce made no mention of any ground for the grant of the decree before the expiry of six months, as required by law. There is no doubt, an application on record, praying for dispensing with this waiting period of six months but no order was passed thereon by the Court.

(6) What is more, in their statements, neither the husband nor the wife made any prayer to the effect that the decree be granted before the expiry of the requisite period of six months. It is also note-worthy that in the judgment granting the decree, there is no mention of the decree being granted before the expiry of the stipulated period, leave aside, any reason for doing so.

(7) It was, in the context of the facts, as narrated, that this matter was taken up *suo moto* and notice was ordered to issue to the parties to show-cause why decree for mutual divorce, granted to them, be not set aside, as being contrary to law.

(8) With the relevant provision in Section 13-B of the Act being "On the motion of both the parties made not earlier than six months", the legislative intent cannot, but be taken to be clear and specific that a decree for mutual consent is not to be granted before six months from the date of the presentation of the petition, referred to in sub-section (1) thereof. Counsel for the parties too could point to no provision of law, under which this period of six months could be curtailed.

(9) Faced with this situation, counsel sought to press in aid, judicial precedents of appellate courts, particularly decisions of this

Court, in appeal, as also of some other High Courts, where proceedings pending between the parties were allowed to be converted to one under Section 13-B of the Act, culminating in a decree for divorce by mutual consent being granted to them.

(10) Such instances are provided by *Smt. Krishna Khetarpal v. Satish Lal* (1), *Indrawal v. Radhey Raman and another* (2), *K. Omparkash v. K. Nalini* (3), *Smt. Surinder Kaur v. Rajinder Singh* (4), *Dinkarrao Narayanrao Jain v. Kamlabai and another* (5), *Daljit Singh v. Amarjit Kaur* (6), *Smt. Kuljit Kaur v. Harjit Singh* (7), *Vijay Kapur v. Suresh* (8), *Lalit Amonatya v. Dimabati Amonatya* (9), *Maya Devi v. Ram Kumar* (10) and, *Virpal Kaur v. Parshinder Pal Singh* (11).

(11) A reading of the judgments cited would show that in all these cases, parties had been litigating for a period well beyond that stipulated in Section 13-B (2) of the Act and this is what provides the distinguishing feature in those cases from the present. In other words, they cannot be read as enabling or authorising any reduction in the period as mentioned in Section 13-B (2) of the Act.

(12) There is a definite policy and rationale for the legislature to have provided for putting off the grant of a decree for divorce by mutual consent for a period of at least six months from the date of the filing of such petition. The intention being to prevent parties rushing to court for divorce, by providing them an opportunity to think things over coolly or as the Latin Phrase goes *locus penitentiae*. The time-frame mentioned in Section 13-B (2) of the Act cannot, therefore, be regarded as merely directory.

(13) There can thus be no escape from the conclusion that no motion for a decree for divorce, by mutual consent, under Section

(1) A.I.R. 1987 Pb. & Hy. 191.

(2) A.I.R. 1981 Allahabad 151.

(3) A.I.R. 1986 A.P. 167.

(4) 1988(1) H.L.R. 325.

(5) 1986(1) H.L.R. 560.

(6) 1988 (1) H.L.R. 666.

(7) 1989 (2) H.L.R. 72.

(8) 1989 (2) H.L.R. 392.

(9) 1990 (1) H.L.R. 282.

(10) 1990 (2) H.L.R. 104.

(11) 1990 (2) H.L.R. 114.

13-B of the Act, can be entertained or granted until at least six months have elapsed from the date of the presentation of the petition for divorce on this ground. Any decree for divorce granted in disregard of this provision cannot, but be treated as void. The Additional District Judge, therefore, clearly fell in error in granting to the parties here a decree for divorce by mutual consent before the expiry of the said period of six months.

(14) With the decree for divorce by mutual consent granted to the parties being void, the present proceedings, must, in the circumstances, be treated as a continuation of the original proceedings. So considered, regard must also be had to the change, in the meanwhile, in the situation of the parties here, namely; that after the decree for divorce had been granted and before the notice was ordered by this court to issue to them, the petitioner Rakesh Garg remarried on September 12, 1991. Keeping this subsequent event of obvious material significance in view, as also the further fact that more than six months have, by now, since elapsed from the presentation of the petition for divorce, and the parties having lived apart ever-since and still seek this relief, it would now clearly be in the interests of justice that the parties be deemed to have been granted a decree for divorce by mutual consent with effect from the date when the period of six months had elapsed since the presentation of the petition for divorce by them. This date being May 7, 1991. A decree for divorce by mutual consent is accordingly hereby granted to them with effect from this date.

(15) This Revision Petition is disposed of in these terms.

J.S.T.

Before : J. S. Sekhon and Amarjeet Chaudhary, JJ.

HARYANA STATE BOARD FOR THE PREVENTION AND CONTROL OF WATER POLLUTION, CHANDIGARH,—*Appellant.*

versus

M/S BHARAT CARPETS LTD., FARIDABAD, HARYANA AND OTHERS,—*Respondents.*

Criminal Appeal No. 585-DBA of 1987.

8th April, 1992.

Water (Prevention and Control of Pollution) Act, 1974—Ss. 43, 44 and 47—Code of Criminal Procedure, 1973 (II of 1974)—S. 249—Offence committed by Company—Discharge of effluent—Complaint—