

Sabita Shashank Singh vs Shashank Shekhar Singh on 1 March, 2021

Author: Aniruddha Bose

Bench: Aniruddha Bose

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (C) NO. 908 OF 2019

SABITA SHASHANK SINGH

PETITIONER(S)

VERSUS

SHASHANK SHEKHAR SINGH

RESPONDENT(S)

O R D E R

The matter is convened through Video Conferencing. The present petition instituted under Section 25 of the Code of Civil Procedure, 1908 originates from a matrimonial dispute between the parties. The respondent-husband had instituted a petition for dissolution of marriage under Section 13(1) (ia) of the Hindu Marriage Act, 1955 in the Family Court at Pune, Maharashtra. The said petition for dissolution of the marriage of the parties was registered as P.A. No. 151/2019. In the present petition the main prayer of the petitioner-wife is for transfer of that divorce petition from the Family Court, Pune, Maharashtra to the Principal Judge, Family Court, Gautam Budh Nagar, Uttar Pradesh. It has been pleaded in the petition that Rachna the parental home of the petitioner is at NOIDA and she is undergoing treatment for certain ailment there. For these reasons, she would be unable to travel to Pune to defend the divorce petition. Moreover, the petitioner has filed a petition for restitution of conjugal rights before the Principal Judge, Family Court, Gautam Budh Nagar.

2. On 8th May, 2019, notice was issued in this petition by a Bench consisting of two Hon'ble Judges of this Court and this Court also stayed further proceedings of P.A. No. 151 of 2019. The matter was called on for hearing again on 21 st January, 2020. On that date, learned counsel appearing for the parties agreed before the Court that the matter could be settled through mediation. The parties were, accordingly, directed to appear before the Co-ordinator, Supreme Court Mediation Centre. The mediation process was successful and a settlement agreement has been arrived at on 15th February, 2021. This settlement agreement forms part of records. The key terms of the settlement include withdrawal or quashing of three pending proceedings between the parties, as also filing of a joint application, inter- alia, for decree of divorce by mutual consent before this Court, invoking this Court's jurisdiction under Article 142 of the Constitution of India. There is provision for payment of

a lumpsum amount to the petitioner-wife in the settlement agreement in case the decree of divorce by mutual consent is granted by this Court. The parties agreed to apply before this Court for dissolution of their marriage and have agreed to withdraw all remaining cases involving the parties on their family members.

3. The parties have subsequently filed a joint application for divorce by mutual consent of the parties invoking Article 142 of the Constitution of India. This application has been registered as I.A. No. 30625 of 2021. One of the main clauses of the settlement agreement stipulates:-

“They shall file a petition jointly for decree of divorce and withdrawal of the aforesaid cases before Hon’ble Supreme Court invoking the inherent power under Article 142 of the Constitution of India for grant of divorce by mutual consent and for withdrawal/quashing/disposal of all pending case/complaints between the parties.”

4. The question which I shall address now is as to whether in exercising my jurisdiction sitting singly, I can pass a decree for dissolving a marriage by mutual consent to which Hindu Marriage Act, 1955 applies in exercise of this Court’s jurisdiction under Article 142 of the Constitution of India, by dispensing with the compliance of some of the procedural formalities and timeline contemplated in Section 13B of the 1955 Act. The Constitution of India vests this Court with the jurisdiction to pass any order or decree for doing complete justice in any cause or matter pending before it. The Constitution of India does not specify the composition or strength of a Bench which could exercise such jurisdiction. This Court, however, has been conferred power under Article 145(2) of the Constitution of India for making rules for fixing the minimum number of Judges who are to sit for any purpose.

5. Article 145 of the Constitution of India lays down:-

“145. Rules of Court, etc.- (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedures of the Court including-

(a) rules as to the persons practising before the Court;

(b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III; (cc) rules as to the proceedings in the Court under article 139A;

(d) rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;

(e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;

(f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;

(g) rules as to the granting of bail;

(h) rules as to stay of proceedings;

(i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;

(j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause(3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion. (4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.”

6. Order VI Rule (1) of the Supreme Court Rules, 2013 specifies that subject to other provisions of the Rules every cause, appeal or matter is to be heard by a Bench consisting of not less than two Judges nominated by the Hon'ble the Chief Justice of India. Four categories of cases, however, have

been stipulated which could be heard and disposed of finally by a Judge sitting singly, nominated by the Hon'ble the Chief Justice. Order VI Rule (1) of the 2013, Rules reads:-

“1. Subject to the other provisions of these rules every cause, appeal or matter shall be heard by a Bench consisting of not less than two Judges nominated by the Chief Justice:

Provided that the following categories of matters may be heard and disposed of finally by a Judge sitting singly nominated by the Chief Justice:

(i) Special leave petitions arising out of grant, dismissal or rejection of Bail Application or Anticipatory Bail Application in the matters filed against the order passed under section 437, section 438 or section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) involving the offences punishable with sentence up to seven years imprisonment;

(ii) Applications for transfer of cases under section 406 of the Code of Criminal Procedure, 1973 (2 of 1974);

(iii) Application of an urgent nature for transfer of cases under section 25 of the Code of Civil Procedure, 1908 (5 of 1908);

(iv) Any other category of cases notified by the Chief Justice from time to time, which may be heard and disposed of finally by a Judge sitting singly nominated by him.”

7. It would be evident from sub Clause (2) of Article 145 that subject to the provisions of Clause (3) thereof, rules made under the said Article may fix the minimum number of Judges who are to sit for any purpose and such rules may provide for the powers of Single Judges and Division Courts. The power or jurisdiction of a Single Judge is derived from the proviso to Order VI Rule (1) of the Supreme Court Rules, 2013. I have reproduced the said Rule in the preceding paragraph. The present petition for transfer comes within the domain or jurisdiction of the Judge sitting singly. Since the provisions of Article 142 of the Constitution of India vests this Court with the jurisdiction to pass any order or decree to do complete justice in any cause or matter pending before it, a Judge sitting singly has the power and jurisdiction to issue orders or pass decrees as specified in the said Article. There is precedent for this proposition of law. A Co-ordinate Bench of this Court in a decision delivered in Transfer Petition (Crl.) No. 225 of 2020 (Rhea Chakraborty vs. State of Bihar & Ors.) decided on 19th August, 2020 has passed an order exercising this Court's jurisdiction vested under Article 142 of the Constitution of India.

8. Turning back to the subject-matter arising in this proceeding, the parties in their memorandum of compromise want this Court to annul their marriage by mutual consent, but not adhering completely to the procedure specified in Section 13B of the 1955 Act. Main prayer in the joint application is in that regard. The statutory provisions for obtaining a decree for dissolution of marriage specifies observance of certain timeline by the parties. In the joint application, the parties

in substance seek deviation from such statute laid procedure. But in my opinion, while a Single Judge of this Court can exercise jurisdiction under Article 142 of the Constitution of India, this power or jurisdiction has to be confined to the four categories of cases referred to in the proviso to Order VI Rule (1) of the 2013 Rules only, or on subjects ancillary or directly relatable to them. Referring a case forming the core dispute in a transfer petition to mediation obviously comes within the subjects relatable to the lis pending before the Court. Annulment of marriage, however, in my view, cannot come within these four categories. I am of the view that while sitting singly this Court does not have the jurisdiction to take a decision on that plea made in the joint application. One of the preconditions for exercise of jurisdiction under Article 142 of the Constitution of India in passing order or decree for doing complete justice is that the cause or the matter in which the Court intends to invoke the provisions thereof must be pending before it. Annulment of marriage cannot be linked to any cause or matter pending before this Court in the facts of the given case. The transfer petition arose out of matrimonial dispute between the parties, but the expression 'cause or matter pending before it' cannot be stretched to cover all disputes originating from such matrimonial problem that can be resolved by this Court, sitting singly, while hearing a transfer petition. I am not expressing any doubt on the jurisdiction of this Court under Article 142 of the Constitution of India to pass decree to dissolve a marriage on consent of the parties without adhering to the timeline and other procedural formalities stipulated in Section 13B of the 1955 Act. But I do not think that while sitting singly, such a decree can be passed having regard to the provisions of the Supreme Court Rules, 2013.

9. In such circumstances, I am of the opinion that the joint application ought to be dealt with by a Bench comprising of two or more Hon'ble Judges as the Hon'ble Chief Justice of India may consider appropriate. Since the parties to the present proceeding have otherwise settled their dispute through the process of mediation, the transfer petition has lost its utility and stands disposed of. Let the file be placed before Hon'ble the Chief Justice of India for appropriate directions for giving effect to the terms of settlement entered into by and between the parties and broadly reflected in the joint application.

.....J. (ANIRUDDHA BOSE) New Delhi;

March 01, 2021.

ITEM NO.14

Court 17 (Video Conferencing)

SECTION XVI-A

S U P R E M E C O U R T O F

I N D I A

RECORD OF PROCEEDINGS

Transfer Petition(s)(Civil) No(s). 908/2019 SABITA SHASHANK SINGH Petitioner(s) VERSUS SHASHANK SHEKHAR SINGH Respondent(s) (MEDIATION REPORT RECEIVED).

IA No. 71299/2019 - EX-PARTE STAY) Date : 01-03-2021 These matters were called on for hearing today. CORAM :

HON'BLE MR. JUSTICE ANIRUDDHA BOSE For Petitioner(s) Mr. Ashwani Garg, Adv.

Mr. Vijay Kumar, AOR For Respondent(s) Mr. Avneesh Arputham, AOR Mr. Anuradha Arputham, Adv.

UPON hearing the counsel the Court made the following O R D E R The matter is convened through Video Conferencing.

The transfer petition stands disposed of in terms of signed order.

Pending application(s), if any, stand disposed of.

(NEETA SAPRA)
COURT MASTER (SH)

(PRADEEP KUMAR)
BRANCH OFFICER

(Signed order is placed on the file)