

[2019] 12 S.C.R. 873

R. SRINIVAS KUMAR

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v.

R. SHAMETHA

(Civil Appeal No. 4696 of 2013)

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OCTOBER 04, 2019

[SANJAY KISHAN KAUL AND M. R. SHAH, JJ.]

Hindu Marriage Act, 1955:

s. 13(1) – Petition under – On the grounds mentioned in s. 13(1)(ia) and (ib) – Also sought divorce on the ground of irretrievable breakdown of marriage – Refused by courts below – In appeal to Supreme Court sought divorce on the ground of irretrievable breakdown of marriage in exercise of powers under Art. 142 of the Constitution – Held: Supreme Court in exercise of its inherent powers u/Art. 142 can dissolve the marriage on the ground of irretrievable breakdown of marriage, even if the facts of the case do not provide a ground in law on which divorce could be granted – In the facts of the case, the marriage is dissolved on the grounds of irretrievable breakdown of marriage in exercise of power u/Art. 142 on the condition that husband pays a permanent alimony quantified at Rs. twenty lakhs to the wife – Constitution of India – Art. 142.

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Allowing the appeal, the Court

HELD: 1. In exercise of powers under Article 142 of the Constitution of India, the marriage can be dissolved on the ground of irretrievable breakdown of marriage. If both the parties to the marriage agree for separation permanently and/or consent for divorce, in that case, certainly both the parties can move the competent court for a decree of divorce by mutual consent. Only in a case where one of the parties do not agree and give consent, the powers under Article 142 of the Constitution of India are required to be invoked to do the substantial Justice between the parties, considering the facts and circumstances of the case. However, at the same time, the interest of the wife is also required to be protected financially so that she may not have

- A to suffer financially in future and she may not have to depend upon others. [Para 6] [879-C-F]
 - 2. The Supreme Court has exercised its inherent powers under Article 142 of the Constitution of India for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted. In the present case, admittedly, the appellant-husband and the respondent-wife have been living separately for more than 22 years and it will not be possible for the parties to live together. Therefore, while protecting the interest of the respondent-wife to compensate her by way of lump sum permanent alimony, this is a fit case to exercise the powers under Article 142 of the Constitution of India and to dissolve the marriage between the parties. [Para 7] [879-F-H; 880-A]
- B unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted. In the present case, admittedly, the appellant-husband and the respondent-wife have been living separately for more than 22 years and it will not be possible for the parties to live together. Therefore, while protecting the interest of the respondent-wife to compensate her by way of lump sum permanent alimony, this is a fit case to exercise the powers under Article 142 of the Constitution of India and to dissolve the marriage between the parties. [Para 7] [879-F-H; 880-A]
- C years and it will not be possible for the parties to live together. Therefore, while protecting the interest of the respondent-wife to compensate her by way of lump sum permanent alimony, this is a fit case to exercise the powers under Article 142 of the Constitution of India and to dissolve the marriage between the parties. [Para 7] [879-F-H; 880-A]
- D 3. The application for divorce filed by the appellant-husband for dissolution of marriage is hereby allowed. The marriage between the appellant-husband and the respondent-wife is ordered to be dissolved in exercise of powers under Article 142 of the Constitution of India on the condition and as agreed by the counsel for the appellant-husband that the appellant-husband shall pay to the respondent-wife a lump sum permanent alimony, quantified at Rs.20,00,000/- (Rupees Twenty Lakhs) to be paid directly to the respondent-wife by way of demand draft within a period of eight weeks. Till the permanent alimony as above is paid to the respondent-wife, the appellant-husband to continue to pay the maintenance as being paid to her. [Para 8] [880-B-C]
- E by the counsel for the appellant-husband that the appellant-husband shall pay to the respondent-wife a lump sum permanent alimony, quantified at Rs.20,00,000/- (Rupees Twenty Lakhs) to be paid directly to the respondent-wife by way of demand draft within a period of eight weeks. Till the permanent alimony as above is paid to the respondent-wife, the appellant-husband to continue to pay the maintenance as being paid to her. [Para 8] [880-B-C]
- F by the counsel for the appellant-husband that the appellant-husband shall pay to the respondent-wife a lump sum permanent alimony, quantified at Rs.20,00,000/- (Rupees Twenty Lakhs) to be paid directly to the respondent-wife by way of demand draft within a period of eight weeks. Till the permanent alimony as above is paid to the respondent-wife, the appellant-husband to continue to pay the maintenance as being paid to her. [Para 8] [880-B-C]
- G Naveen Kohli v. Neelu Kohli (2006) 4 SCC 558 : [2006] 3 SCR 53 ; Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511 : [2007] 4 SCR 428 ; Sukhendu Das v. Rita Mukherjee (2017) 9 SCC 632 – relied on.
- H Durga Prasad Tripathy v. Arundathi Tripathy (2005) 7 SCC 353 : [2005] 2 Suppl. SCR 833 ; Sanghamitra Ghosh v. Kajal Kumar Ghosh (2007) 2 SCC 220 : [2006] 9 Suppl. SCR 156 ; K. Srinivas Rao v. D.A.

Deepa (2013) 5 SCC 226 : [2013] 2 SCR 126 ; A
Chetna Dass v. Kamla Devi (2001) 4 SCC 250 : [2001]
3 SCR 20 ; *Vishnu Dutt Sharma v. Manju Sharma*
(2009) 6 SCC 379 : [2009] 3 SCR 891 ; *Hitesh*
Bhatnagar v. Deepa Bhatnagar (2011) 5 SCC 234 :
[2001] 6 SCR 118 ; *Darshan Gupta v. Radhika Gupta*
(2013) 9 SCC 1 : [2013] 10 SCR 937 ; *Manish Goel*
v. Rohini Goel (2010) 4 SCC 393 : [2010] 2 SCR 414
– referred to.

<u>Case Law Reference</u>			
[2005] 2 Suppl. SCR 833	referred to	Para 3.1	C
[2006] 3 SCR 53	relied on	Para 3.1	
[2006] 9 Suppl. SCR 156	referred to	Para 3.1	
[2007] 4 SCR 428	relied on	Para 3.1	
[2013] 2 SCR 126	referred to	Para 3.1	D
(2017) 9 SCC 632	relied on	Para 3.1	
[2001] 3 SCR 20	referred to	Para 4.2	
[2009] 3 SCR 891	referred to	Para 4.2	
[2001] 6 SCR 118	referred to	Para 4.2	E
[2013] 10 SCR 937	referred to	Para 4.2	
[2010] 2 SCR 414	referred to	Para 4.2	

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4696
of 2013.

From the Judgment and Order 06.02.2012 of the High Court of F
Judicature. Andhra Pradesh at Hyderabad in C.M.A. No. 4142 of 2003.

Guru Krishna Kumar, Sr. Adv., A. Karthik, Ms. Shruta Gopalan,
Ankit Jaglan, Advs. for the Appellant.

Jayant Kumar Mehta, Ms. Anu Shrivastava, Advs. for the G
Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment H
and order dated 06.02.2012 passed in C.M.A. No. 4142 of 2003 by

- A the High Court of Judicature Andhra Pradesh at Hyderabad, by which the High Court has dismissed the said appeal preferred by the appellant-husband and has confirmed the judgment and order passed by the learned Family Court refusing to pass a decree of divorce against the respondent-wife, the appellant-husband has preferred the present appeal.
- B 2. That the marriage of the appellant and the respondent took place on 09.05.1993. That out of the said wedlock, the respondent gave birth to a male child on 29.08.1995. It appears that there were differences of opinion between the parties and according to the appellant-husband, cruelty was meted out to him. Up to 1997, many a times, the respondent-wife stayed at her parental house. The appellant-husband filed a divorce petition in the year 1999 being O.P. No. 157 of 1999 before the Family Court at Hyderabad. That the said petition was filed for a decree of divorce against the respondent-wife under Section 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955. That the learned
- C Family Court dismissed the said divorce petition by observing and holding that the appellant-husband has failed to prove the cruelty by the respondent-wife. The Family Court also refused to pass a decree of divorce on the ground of irretrievable breakdown of marriage.
- E 2.1 Feeling aggrieved and dissatisfied with the judgment and order passed by the Family Court at Hyderabad dated 04.09.2003 in O.P. No. 157 of 1999 dismissing the divorce petition, the appellant-husband preferred an appeal before the High Court. Before the High Court also, the appellant-husband sought a decree of divorce on the ground of irretrievable breakdown of marriage. By the impugned judgment and order, the High Court has dismissed the said appeal. Hence, the appellant-husband is before this Court by way of the present appeal.
- G 3. Shri Guru Krishna Kumar, learned Senior Advocate appearing on behalf of the appellant-husband has made strenuous efforts to upset the findings recorded by both the courts below on cruelty. In the alternative, it is vehemently submitted by Shri Guru Krishna Kumar, learned Senior Advocate appearing on behalf of the appellant-husband that both the appellant-husband and the respondent-wife are residing separately since last 22 years and that it is impossible to save the marriage and that there is no chance of marriage surviving and it is broken beyond repair. It is submitted that therefore as there is
- H irretrievable breakdown of marriage it is in the fitness of the things to

dissolve the marriage even in exercise of the powers under Article 142 A
of the Constitution of India and to do substantial justice to the parties.

3.1 In support of his alternative submission to dissolve the marriage on the ground of irretrievable breakdown of marriage, learned Senior Advocate has heavily relied upon the following decisions of this Court, *Durga Prasad Tripathy v. Arundathi Tripathy* (2005) 7 SCC 353; *Naveen Kohli v. Neelu Kohli* (2006) 4 SCC 558; *Sanghamitra Ghosh v. Kajal Kumar Ghosh* (2007) 2 SCC 220; *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511; *K. Srinivas Rao v. D.A. Deepa* (2013) 5 SCC 226; and *Sukhendu Das v. Rita Mukherjee* (2017) 9 SCC 632. C

3.2 Shri Guru Krishna Kumar, learned Senior Advocate appearing on behalf of the appellant-husband has also stated at the Bar that the appellant-husband is ready and willing to pay a reasonable permanent alimony to the respondent-wife in case a decree of dissolution of marriage is granted to the appellant-husband. D

4. The present appeal is vehemently opposed by Shri Jayant Kumar Mehta, learned Advocate appearing on behalf of the respondent-wife. He has vehemently submitted that this is not a fit case to dissolve the marriage between the appellant and the respondent on the ground of irretrievable breakdown of marriage, in exercise of the powers under Article 142 of the Constitution of India. E

4.1 It is vehemently submitted by the learned Advocate appearing on behalf of the respondent-wife that a decree of divorce cannot be granted on the ground of irretrievable breakdown of marriage, if either of the parties is not willing and has not consented to such dissolution. It is submitted that only in a case where both the parties to the marriage agree and/or give consent, the marriage can be dissolved and a decree of divorce can be passed on the ground of irretrievable breakdown of marriage. F

4.2 Making the above submissions and relying upon the following decisions of this Court in the cases of *Chetna Dass v. Kamla Devi* (2001) 4 SCC 250; *Vishnu Dutt Sharma v. Manju Sharma* (2009) 6 SCC 379; *Hitesh Bhatnagar v. Deepa Bhatnagar* (2011) 5 SCC 234; *Darshan Gupta v. Radhika Gupta* (2013) 9 SCC 1; and *Manish Goel v. Rohini Goel* (2010) 4 SCC 393, it is prayed to dismiss the present appeal. G H

A 5. We have heard the learned counsel for the respective parties at length.

- 5.1 At the outset, it is required to be noted and does not seem to be in dispute that since last 22 years both the appellant-husband and the respondent-wife are residing separately. It also appears that all efforts to continue the marriage have failed and there is no possibility of re-union because of the strained relations between the parties. Thus, it appears that marriage between the appellant-husband and the respondent-wife has irretrievably broken down. In the case of *Hitesh Bhatnagar (supra)*, it is noted by this Court that Courts can dissolve a marriage as irretrievably broken down only when it is impossible to save the marriage and all efforts are made in that regard and when the Court is convinced beyond any doubt that there is actually no chance of the marriage surviving and it is broken beyond repair.

D 5.2 In the case of *Naveen Kohli (supra)*, a three Judge Bench of this Court has observed as under:

- “74.....Once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.
- F 85. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist....

G 86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the

matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct *de jure* what is already defunct *de facto....*"

[emphasis supplied] B

A similar view has been expressed in the case of *Samar Ghosh (supra)*.

In the similar set of facts and circumstances of the case, this Court in the case of *Sukhendu Das (supra)* has directed to dissolve the marriage on the ground of irretrievable breakdown of marriage, in exercise of powers under Article 142 of the Constitution of India.

6. Now so far as submission on behalf of the respondent-wife that unless there is a consent by both the parties, even in exercise of powers under Article 142 of the Constitution of India the marriage cannot be dissolved on the ground of irretrievable breakdown of marriage is concerned, the aforesaid has no substance. If both the parties to the marriage agree for separation permanently and/or consent for divorce, in that case, certainly both the parties can move the competent court for a decree of divorce by mutual consent. Only in a case where one of the parties do not agree and give consent, only then the powers under Article 142 of the Constitution of India are required to be invoked to do the substantial Justice between the parties, considering the facts and circumstances of the case. However, at the same time, the interest of the wife is also required to be protected financially so that she may not have to suffer financially in future and she may not have to depend upon others.

7. This Court, in a series of judgments, has exercised its inherent powers under Article 142 of the Constitution of India for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted. In the present case, admittedly, the appellant-husband and the respondent-wife have been living separately for more than 22 years and it will not be possible for the parties to live together. Therefore, we are of the opinion that while protecting the interest of the respondent-wife to compensate her by way of lump sum permanent alimony, this is a fit case to exercise the powers under Article

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- A 142 of the Constitution of India and to dissolve the marriage between the parties.
8. In view of the above and for the reasons stated above, the application for divorce filed by the appellant-husband for dissolution of marriage is hereby allowed. The marriage between the appellant-husband and the respondent-wife is ordered to be dissolved in exercise of powers under Article 142 of the Constitution of India on the condition and as agreed by the learned Senior Advocate appearing on behalf of the appellant-husband that the appellant-husband shall pay to the respondent-wife a lump sum permanent alimony, quantified at Rs.20,00,000/- (Rupees Twenty Lakhs) to be paid directly to the respondent-wife by way of demand draft within a period of eight weeks from today. Till the permanent alimony as above is paid to the respondent-wife, the appellant-husband to continue to pay the maintenance as being paid to her.
9. The appeal is allowed in the aforesaid terms. No costs.
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Kalpana K. Tripathy

Appeal allowed.