

Punjab-Haryana High Court

Arun Chawla vs Smt. Reena on 9 October, 1997

Equivalent citations: II (1999) DMC 18

Author: V Aggarwal

Bench: N Sodhi, V Aggarwal

JUDGMENT V.S. Aggarwal, J.

1. Appellant Arun Kumar Chawla was married to respondent Smt. Reena on 5.3.1988 at Jalandhar City. The marriage was solemnised according to Hindu religious rites. The appellant had filed a petition under Section 13 of the Hindu Marriage Act (hereinafter described as the 'Acts') alleging that after one month of the marriage, the respondent started compelling him to have a separate residence and start his own independent business. She also insisted the appellant to take his share in the property from his father. The appellant did not agree. He told her that his elder brother has settled in United States of America and he has to look after his old parents. The respondent started misbehaving in an arrogant and cruel manner. She even refused to prepare tea or meals when visitors came to their house. The respondent became pregnant, but the pregnancy was terminated. She started calling the appellant a spineless man and that the position of the appellant was that of a servant in the house. The respondent misbehaved towards her mother-in-law and even would say that she will rest when the mother-in-law expires. On account of this behaviour or the respondent, the mother-in-law went to U.S.A. In the absence of the mother-in-law, the respondent refused to cook meals for the appellant and his father, she threatened to commit suicide in May, 1989 and that she will falsely implicate the appellant and his relations. The relations of the appellant were insulted. On 8.12.1989 a petition for divorce was filed by the appellant.

2. Learned Additional District Judge, Jalandhar on 24.8.1992 allowed the application filed by the appellant. Aggrieved by the same, the respondent preferred an appeal against the order of Additional District Judge. Learned Single Judge of this Court on 14.3.1996 allowed the appeal and set aside the judgment and decree passed by the Trial Court. This prompted the appellant to file L.P.A. under consideration.

3. A joint application was presented by the parties for permitting them to convert the petition filed under Section 13 of the Hindu Marriage Act to be one under Section 13-B of the said Act. It was pointed that parties have been litigating for the last about 7 years. At the intervention of certain respectable, they have settled the dispute. There is no possibility of their living together. The respondent has accepted Rs. 1,25,000/- (Rupees one lac and twenty five thousand only) with regard to her all past, present and future claims and accordingly, it was prayed that a decree for divorce be passed so as to annul the marriage by mutual consent.

4. It was followed by another application for condoning the period of six months for grant of divorce by mutual consent.

5. Section 13-B of the Hindu Marriage Act, 1955 was added in the said Act by amending Act No. 68 of 1976 by virtue of which various provisions relating to divorce by mutual consent came to be added in the said Act. It represents synthesis of the old and current approach to the mutual relations. The

winds of change were taken note of. The element there of being contract in the concept of marriage paved its way into the Hindu Marriages.

6. Section 13-B provides for divorce by mutual consent reads as under:

"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."

7. On analysis of Section 13-B it is clear that petition for dissolution of marriage can be presented jointly by the parties on the ground that they have been living separately for a period of one year or more. It has to be seen that they have not been able to live together and that they have mutually agreed that marriage should be dissolved. In terms of Sub-section (2) of Section 13-B, the parties can jointly move the Court for passing of a decree of dissolution. The Court after making an enquiry, if it feels satisfied, can pass a decree for divorce. The condition precedent under Section 13-B(2) of the Act is that parties should move the Court not earlier than six months after the presentation of the petition and not later than 18 months of such presentation.

8. We have considered this mutual consent petition in the light of the fact as to whether six months have to be counted from the date of filing of the petition under Section 13-B(1) of the Act or from the date of application was filed originally for divorce.

9. Our attention has been drawn towards the decision of the Supreme Court in the case of Sureshta Devi v. Om Prakash, AIR 1992 Supreme Court 1904. In paragraph 13, the Supreme Court had observed and held as under :

"From the analysis of the section, it will be apparent that the filing of the petition with mutual consent does not authorise the Court to make a decree for divorce. There is a period of waiting from 6 to 18 months. This interregnum was obviously intended to give time and opportunity to the parties to reflect on their move and seek advise from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The spouse may not be a party to the joint motion under Sub-section (2). There is nothing in the section which prevents such course. The section does not provide that if there is a change of mind it should not be by one party alone, but by both. The High Courts of Bombay and Delhi have proceeded on the

ground that the crucial time for giving mutual consent for divorce is the time of filing the petition and not the time when they subsequently move for divorce decree. This approach appears to be untenable. At the time of the petition by mutual consent, the parties are not unaware that their petition does not by itself snap marital ties. They know that they have to take a further step to snap marital ties. Sub-section (2) of Section 13-B is dear on this point. It provides that "on the motion of both the parties.....if the petition is not withdrawn in the meantime, the Court shall.... pass a decree of divorce". What is significant in this provision is that there should also be mutual consent when they move the Court with a request to pass a decree of divorce. Secondly, the Court shall be satisfied about the bona fides and the consent of the parties. If there is no mutual consent at the time of the enquiry, the Court gets no jurisdiction to make a decree for divorce. If the view is otherwise, the Court could make an enquiry and pass a divorce decree even at the instance of one of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent."

10. However, we feel that these observations of the Supreme Court are confined to the question that was before the Supreme Court. In Paragraph 11 of the judgment, Supreme Court observed that the question for consideration was as to whether it is open to one of the parties at any time till the decree for divorce is passed to withdraw the consent given to the petition. The question that is arising before us was not subject matter of controversy before the Supreme Court, therefore, the decision in the case of Sureshta Devi (supra), will not be a bar for considering the request of the parties.

11. In this regard, some of the precedents on the subject can well be referred to and would be in the fairness of things. The question that arises for consideration is as to whether Court would be justified in passing a decree of divorce by mutual consent after the request has already been made for converting the original petition filed under Section 13 of the Act to one under Section 13-B of the Hindu Marriage Act. In the case of Krishna v. Attar Singh, I (1992) Divorce & Matrimonial Cases (for short DMC) 211, before the Delhi High Court, the marriage had been solemnised on 16.11.1983. The wife had filed an application seeking dissolution of marriage on the ground of cruelty. The petition was dismissed on 20.3.1990. The parties were living separately. An application was filed under Section 13-B(2) of the Hindu Marriage Act for grant of divorce by mutual consent. The learned Single Judge of the Delhi High Court taking note of fact that parties were living separately and no useful purpose would be served by continuing acrimonious litigation, allowed the application and granted decree of divorce by mutual consent. They were directed not to wait for a further period of six months.

12. Same was the view of the Madhya Pradesh High Court in the case of Padmini v. Hemant Singh, I (1994) DMC 465. In the High Court an application was filed under Section 13-B of the Act for grant of decree for divorce by mutual consent. In paragraphs 17 and 18, it was held as under:

"17. The parties showed anxiety to terminate the tortue and perish the pang without further procrastination. In this pursuit, they desired 'today' and despised 'tomorrow', perhaps on the same line as Marital assumed in Epigrams:

"Tomorrow will I live, the fool does say, Today itself too late, the wise lived yesterday."

18. By amendment, the law has set its face against unwilling perpetration of the matrimonial status between two unwilling persons. After all time table as embodied in Section 13-B(2) is a procedural matter which is handmaid of justice.

On one hand, I am satisfied that ingredients of mutual consent are fully satisfied in this case and on the other hand, I am disposed to hold that time table fixed by Section 13-B(2) does not apply to Appellate Court and imposes no fetters as such. In view of the acceptance of prayer based on consent, I found it unnecessary to scrutinise the worth of evidence led by the parties and correctness of the conclusion recorded on it."

13. Similar was the view of the Rajasthan High Court in the case of Hari Prakash Mishra v. Smt. Shakuntala Mishra, II (1995) DMC 202. The Court noted that when there are no chances that the parties resuming their marital life and that keeping in view the fact that there is no collusion between the parties, decree of divorce and dissolution of marriage can be granted with immediate effect. A Division Bench of this Court also took note of the similar facts in the case of Harpal Singh v. Smt. Shakuntala, 1995(2), Punjab Law Reporter 203=I (1995) DMC 418 (DB). The learned Additional District Judge in the cited case had dismissed the petition filed under Section 13 of the Hindu Marriage Act. During the pendency of the appeal, the parties arrived at a settlement and filed a joint application under Section 13-B of the Act. It was prayed that decree for mutual divorce may be granted in the interest of justice. On being satisfied that there were no chance of their living together, the petition was allowed and decree for mutual divorce may be granted in the interest of justice. On being satisfied that there were no chance of their living together, the petition was allowed and decree was passed for divorce declaring the marriage of the parties to have been dissolved. The learned Single Judge of this Court in the case of Niranjana Kumar v. Veena Rani, 1995(2) Punjab Law Reporter 200, agreed with the view point of Madhya Pradesh and Rajasthan High Courts and held that when there are no chances of reconciliation, no useful purpose would be served by keeping the petition for divorce by mutual consent pending for a period of six months.

14. We find that the facts of the present case can be re-analysed. The period of six months has to be counted from the date of the petition presented under Section 13-B(2) of the Act. Once an earlier application has been filed seeking conversion of the petition filed under Section 13 of the Act under Section 13-B(2) of the Act and the said application is allowed, the result would be that by virtue of the said petition, which amounts to an amendment, the period of six months will be reckoned from the original date of filing of the application. In the present case, the litigation has been going on for the last more than 7 years. The said period contemplated under Section 13-B(2) of the Act has been expired since long. There are no chances of reconciliation between the parties. We are satisfied that there is no fraud that has been practised. There is no reason, thus, to refuse permission that marriage should be allowed to be dissolved by mutual consent.

15. Accordingly, we allow C.M. No. 1350 of 1996 and also the L.P.A. against the judgment of learned Single Judge. We pass a decree of divorce declaring the marriage between the parties to be dissolved under Section 13-B of the Hindu Marriage Act. Parties are left to bear their own costs.