Gujarat High Court
Jigneshkumar Dilipbhai vs Principal Senior Civil on 30 November, 2013

JIGNESHKUMAR DILIPBHAI PATELV/SPRINCIPAL SENIOR CIVIL COURT....Respondent(s)

C/SCA/16587/2013

JUDGMENT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL
APPLICATION NO. 16587 of 2013

FOR
APPROVAL AND SIGNATURE:

HONOURABLE
SMT. JUSTICE ABHILASHA KUMARI

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1

Whether
Reporters of Local Papers may be allowed to see the judgment ?

Yes

2

To be referred to the Reporter or not ?

Yes

3

Whether their Lordships wish to see the fair copy of the judgment ?

No

4

Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

No

5

Whether it is to be circulated to the civil judge ?

No

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JIGNESHKUMAR DILIPBHAI
PATEL & 1 ....Petitioners

Versus

PRINCIPAL SENIOR CIVIL
Court .... Respondent

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Appearance:

MR
RJ GOSWAMI, ADVOCATE FOR MR YUNUS U MALEK, ADVOCATE for Petitioners
MR SP MAJMUDAR, AMICUS CURIAE

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CORAM:

HONOURABLE SMT.
JUSTICE ABHILASHA KUMARI

Date : 30/11/2013

ORAL JUDGMENT

Rule.

On the facts and in the circumstances of the case, and with the consent of learned counsel for the petitioners, the petition is being heard and decided finally.

The present petition under Article 227 of the Constitution of India has been preferred, inter alia, with a prayer to quash and set aside the order dated 25.10.2013, passed by the learned Principal Civil Judge (S.D.), Kalol, below Exhibit 5, in Hindu Marriage Petition No.43 of 2013, and to issue directions that the said petition be disposed of within a period of fifteen days.

Briefly stated, the relevant facts of the case are that, petitioner No.1 (husband) got married to petitioner No.2 (wife), on 17.04.2009. The marriage was solemnized according to Hindu rites and rituals. The petitioners were unable to adjust with each other, due to irreconcilable temperamental differences and it became impossible for them to live together as husband and wife. According to the petitioners, their marriage has broken down irretrievably. Hence, the petitioners have mutually agreed that their marriage be dissolved as they are unable to reside together in spite of bona fide efforts made by relatives and friends. There is no hope that they would be able to resume their matrimonial relationship. The petitioners have not been cohabiting with each other ever since 11.06.2011, and are living separately. The petitioners have jointly executed a Divorce Deed on 23.09.2013, as per their custom and usage. However, the petitioners have also filed Hindu Marriage Petition No.43 of 2013, before the learned Principal Civil Judge (S.D.), Kalol, District: Gandhinagar, under Section 13 of the Hindu Marriage Act, 1955 ( the Act for short), praying that the marriage solemnized between them be dissolved and a decree of divorce, by mutual consent, under Section 13-B of the Act be passed. The said petition was filed on 09.10.2013. Along with the petition, the petitioners have filed an application (Ex.5) under Section 13-B(2) of the Act, for waiving the

statutory period of six months for passing a decree of divorce.

It is the case of the petitioners that petitioner No.2 (wife) got a Student Dependant VISA on the basis of her marriage with petitioner No.1 and had gone to the United Kingdom on the said VISA. This VISA would now expire on 31.12.2013, and for petitioner No.2 to apply for an extension of the VISA on, or before, 31.12.2013, a decree of divorce is required to be submitted.

The petitioners had filed Special Civil Application No.16228 of 2013, for early hearing of the petition filed under Section 13-B of the Act and the application under Ex.5, for waiver of the period of six months. By an order dated 23.10.2013, the petition was permitted to be withdrawn, with a view to filing an application before the learned Principal Civil Judge (S.D.), Kalol, for early hearing of the application under Section 13-B(2) of the Act. Pursuant thereto, the application at Ex.5 filed by the petitioners under Section 13-B(2) of the Act, came to be rejected by the impugned order dated 25.10.2013, giving rise to the filing of the present petition.

Mr.R.J.Goswami, learned advocate, has appeared for Mr.Yunus U.Malek, learned advocate on behalf of both the petitioners. The sole respondent is the learned Principal Civil Judge, Senior Division, Kalol.

The issue that arises for consideration is whether the statutory period of six months, as envisaged under Section 13-B(2) of the Act, can be curtailed by this Court, or not.

Mr.S.P.Majmudar, learned advocate, has been requested to assist the Court as amicus curiae. He has kindly consented to do so.

Mr.R.J.Goswami, learned advocate for the petitioners, has addressed lengthy submissions, which are briefly summarised hereinbelow:

a) That, since 11.06.2011, both the petitioners are residing separately. Almost two and a half years have elapsed since then and there is no hope of a reconciliation between them. It is an admitted position, mutually agreed upon by the petitioners that, as they are unable to reside together, their marriage should be dissolved. They are unable to resume their matrimonial relationship or perform any marital obligations. Affidavits to this effect have been sworn by the petitioners and are placed on record.

b) That, the minor child Ark, born on 25.11.2010, out of the wedlock of the petitioners, is in the custody of petitioner No.1. It is mutually agreed between the parties that the child shall remain with petitioner No.1 even after the decree of divorce and petitioner No.2 would not claim the custody of the child in future. There are no other issues or disputes regarding any articles, pending to be resolved between the petitioners; therefore, there is no impediment in curtailing the period of six months and granting a decree of divorce by mutual consent.

c) That, petitioner No.2 had gone to England to study on a Dependant VISA which expires on 31.12.2013. For filing an application for an extension of the VISA, a decree of divorce would be

required. Petitioner No.2 would be put to great hardship if a decree of divorce is not given expeditiously.

d) That, the intention of the Legislature in introducing the cooling-off period of six months is to enable the parties to consider reconciliation. However, as per the view taken in several judicial pronouncements, the period of six months, as envisaged in Section 13-B(2), of the Act can be curtailed by the Court, especially in the present case, where there is no chance of reconciliation between the petitioners. The six months period, in the present case, would expire on 09.04.2014.

e) That, the provisions of Section 13-B(2) are directory and not mandatory, as held by this Court in several judicial pronouncements. As there is no chance of a reunion between the petitioners, there would be no legal impediment in the way of granting a decree of divorce by mutual consent, by waiving the period of six months.

f) That, ultimately, the Court is to ensure that justice is done. In the present scenario, where the differences between the parties are irreconcilable, the interest of justice would require that the period of six months be waived/ curtailed. No fruitful purpose would be served by prolonging the matter.

The learned advocate for the petitioners has placed reliance upon several judgments, as below:

(i) Kiran v. Sharad Dutt (2000)10 SCC 243

(ii) Anjana Kishore v. Puneet Kishore (2002) 10 SCC 194

(iii) Anita Sabharwal v. Anil Sabharwal (1997)11 SCC 490

(iv) Devinder Singh Narula v. Meenakshi Nangia (2012)8 SCC 580

(v) Harpreet Singh Popli v. Manmeet Kaur Popli 2009(14) SCALE 113

(vi) Dr.Dhiren Harilal Garasia v. Mansu @ Mina Chamanlal Dangi 1987(2) GLH 291

(vii) Jyotiben v. Jigneshbhai Jaisukhbhai Oza 2000(4) GLR 3522

(viii) Bijal Chandreshbhai Bhatt v. Chandreshbhai Sahdevbhai Bhatt 2000(1) GLR 515

(ix) Uday Narendrabhai Bhatt v. Shivangi Narendrabhai Shastri Order dated 01.04.2011 in Special Civil Application No.2854 of 2011

(x) Maulin Girishchandra Pandya v. Riddhi w/o/. Maulin G. Pandya and d/o. Mahendra Shantilal Bhatt Order dated 22.04.2011 in Special Civil Application No.4877 of 2011 Mr.S.P.Majmudar, learned amicus curiae has submitted that the issue that arises for decision would be whether the cooling-off period of six months is directory or mandatory, and whether this Court, or the Trial Court, can exercise power to waive the said period. Learned amicus curiae has brought to the notice of this Court, a Division Bench judgment of the Bombay High Court in the case of Principal Judge, Family Court, Nagpur v. NIL, reported in AIR 2009 BOMBAY 12 wherein a view has been taken that the statutory waiting period of six months is mandatory, and cannot be condoned or waived by the Court. It is submitted that the power exercised by the Supreme Court in certain cases where a decree of divorce has been granted by waiving the waiting period is under Article 142 of the Constitution of India, which power is not available to any other Court in the land, therefore, no other Court is competent to pass such orders, before the prescribed period under the relevant provisions of the Act, has expired.

On the importance of the six months statutory waiting period, learned amicus curiae has referred to a judgment of the Supreme Court in Smt.Sureshta Devi v. Om Prakash, reported in (1991)2 SCC 25, wherein the provision containing the waiting period of six to eighteen months has been discussed.

This Court has heard learned counsel for the petitioners and learned amicus curiae, at length. At this stage, it would be appropriate to refer to the judgments cited by the learned counsel for the petitioners.

In Kiran v. Sharad Dutt (supra), the Supreme Court granted permission to the parties to amend the divorce petition, to be treated as one under Section 13-B of the Hindu Marriage Act and pass a decree for divorce by mutual consent, in exercise of power under Article 142 of the Constitution of India on the ground that the proceedings between the husband and wife for dissolution of the marriage were pending since eleven years.

In Anjana Kishore v. Puneet Kishore (supra), the Supreme Court, in exercise of power under Article 142 of the Constitution of India, granted a decree of divorce by mutual consent. In that case, a compromise had been arrived at between the parties during the pendency of the proceedings. The prayer for transfer of the case from the Family Court at Bandra, Mumbai, to the Family Court at Sahranpur, was declined. The Supreme Court directed the parties to file a joint petition before the Family Court at Bandra, Mumbai, for grant of divorce by mutual consent and to file the terms of compromise in the said petition. In the above circumstances, it was directed that an application for curtailment of time for grant of divorce shall be filed along with the joint petition and the Family Court may dispense with the need of waiting for six months, which is required by sub-section (2) of

Section 13-B of the Act, and pass a final order in the petition.

In Anita Sabharwal v. Anil Sabharwal (supra), the facts were that the petitioner-wife sought the transfer of the petition preferred by the respondent-husband at Delhi. During the pendency of the transfer petition, the parties as well as their counsel placed on record a Compromise Deed wherein the parties agreed to get divorce by mutual consent. Taking into consideration the aspect that the marriage had taken place fourteen years ago and the parties had spent the prime of their lives in acrimony and litigation, the Supreme Court granted a decree of divorce by dissolution of the marriage by mutual consent to the parties.

In Devinder Singh Narula v. Meenakshi Nangia (supra), the Supreme Court, by invoking powers under Article 142 of the Constitution of India, dispensed with the waiting period of six months envisaged in sub-section (2) of Section 13-B of the Act on the ground of irreconcilable differences between the parties who had lived separately for several years.

In Harpreet Singh Popli v. Manmeet Kaur Popli (supra), the Supreme Court was dealing with the transfer petition filed by the husband for transfer of the criminal case arising out of the FIR pending in the Court of the Chief Judicial Magistrate, Meerut, along with the petition filed by the wife for transfer of the divorce case pending in the Court of District Judge, Tis Hazari Courts, Delhi, to the Family Court, Meerut, in terms of the Deed of Settlement/ Compromise arrived at between them. The ratio of this case would have no bearing on the issue to be decided by this Court, which is, whether the statutory period of six months, as stipulated in sub-section (2) of Section 13-B of the Act, can be waived / curtailed by this Court.

In Dr.Dhiren Harilal Garasia v. Mansu @ Mina Chamanlal Dangi (supra), a concurrent Bench of this Court has held that when the provisions of Section 13-B(2) of the Act are directory and not mandatory in nature and the said provision cannot come in the way of the Appellate Court in passing a decree of divorce by mutual consent in a given case even before the expiry of six months from the date of the presentation of the petition. However, a note of caution was sounded to the effect that, though the said provision is held to be directory, it does not necessarily follow that in all cases the courts should pass a decree of divorce even before the expiry of six months. The relevant extract of the judgment is reproduced hereinbelow:

7. Sub-section (2) of Section 13-B, of course, provides that decree for divorce has to be passed after the expiry of six months from the date of presentation of the petition for divorce by mutual consent. The amendment is granted by this Court on 19.3.1987 and six months have still not elapsed from the date of the said amendment. But at the same time, the original petition was filed on 9-3-1984 and more than tow years have elapsed since then. The amendment may relate back to the date of the presentation of the original petition and, therefore, also it can be said that six months have elapsed and therefore, there cannot be any objection in passing a decree for divorce. It is again a well-settled proposition of law that a statutory provision, though in a mandatory form, can yet be treated as directory in nature and there are weighty reasons warranting the reading of Section13-B, Clause (2) as directory. The Legislature has by enacting Section 13-B of the Act liberalised the tendency of providing relief to parties on the basis of their mutual consent from their broken marriages. This

relief is granted by bringing about a profound alteration in the concept of a Hindu marriage from that of a sacrament to a contract. By that alteration, law has definitely set its face against forcible perpetuation of the status of matrimony between unwilling parties. The provision of the period of six months fixed by Section 13-B(2) is a rule relating to the jurisdiction of the Courts to entertain a petition filed for divorce by consent. The question of jurisdiction is dealt with by Section 13-B(1) which must be strictly compelled with, while Section 13-B(2) is a part of mere procedure. It must, therefore, be interpreted as a handmaid of justice in order to advance and further the interests of justice and not as a technical rule. It is pertinent to note that Section 13-B(2) provides that decree has to be passed not earlier than six months and not later than 18 months from the date of presentation of the petition. If we take it that the provision contained in Section 13-B(2) is mandatory, then in a given case a Court may not be able to pass a decree for divorce by mutual consent if the period of 18 months has expired for some reasons beyond the control of the parties. In view of this, I am inclined to say that the provision contained in Section 13-B(2) is directory and not mandatory. At any rate, this provision cannot come in the way of an Appellate Court in passing a decree for divorce by mutual consent in a given case even before the expiry of six months from the date of the presentation of the petition. When a Court finds that it is not possible to arrive at a reconciliation between the parties and the parties are living apart for long and their wedlock has virtually become a deadlock, it would be futile to wait for a period of six months. Chances of reunion have completely faded away in the present case and, therefore, I think that a decree for divorce by mutual consent should be passed immediately. I am fortified in this view of mine by a Division Bench judgment of the Andhra Pradesh High Court reported in K. Omprakash v. K. Nalini, AIR 1986 AP 167. I may at the same time add here a word of caution that simply because the provision of Section 13-B(2) can be said to be directory, it does not necessarily follow that in all cases the Court should pass a decree for divorce even before the expiry of six months. It will depend upon the facts of each case whether decree should be passed before the expiry of six months or the Court should wait for a period of six months or more. The Court will have to exercise its discretion judicially in considering whether decree for divorce by mutual consent should be passed in a particular case even before the expiry of the period of six months.

In Jyotiben v. Jigneshbhai Jaisukhbhai Oza (supra), this Court was deciding a petition where the fact-situation was that the husband and wife were living separately for the last, more than five years. There was no child out of the said wedlock and the petition for dissolution of the marriage, by a decree of divorce, was pending in the Trial Court since four years. Both the parties had mutually agreed that their marriage should be dissolved by a decree of divorce by mutual consent. The petitioner-wife had accepted a sum of money towards a full and final settlement of her claim towards permanent alimony. Under the circumstances, this Court held that all the necessary ingredients to be fulfilled by the parties have been fulfilled and as they are unable to live together, the waiting period, as envisaged under sub-section (2) of Section 13-B of the Act, could be curtailed and a decree of divorce by mutual consent passed. The relevant extract of the judgment is quoted hereinbelow:

9. Ordinarily such petition has to be filed before the court below and more so when the divorce petition is pending between the parties before the said court. In case where the matter is pending before this Court arising out of the divorce petition, if the party desirous of settling their disputes

and filed an application for dissolution of marriage by decree of divorce by mutual consent, the court should relegate them to the trial court. However, in some exceptional cases, the court may order for dissolution of marriage by decree of divorce by mutual consent on joint application filed by the parties to the litigation. The record of the trial court of the Hindu Marriage Petition has been called for and which is before this Court. Both the parties through their advocate prayed for passing of the decree by this court in this proceeding for dissolution of their marriage by decree of divorce by consent. The reasons have been given that the litigation now in the courts heavily costs to the parties and in case they are relegated to the trial court for this petition to be filed and that court has to pass the decree, there is all possibility that they have to incur further litigation expenses and secondly, the Court may not dispense with the requirement of waiting period to be followed before decree of divorce is granted as provided under subsection 2 of section 13 of the Act, 1955. It has next been submitted by the parties through their counsel that it is only a formality in the form and not of the substance. When the matter is pending before this 'court and the file of divorce petition is also in this court, what for these parties should be] relegated to the District Court and it may not be in the larger interest of parties themselves also. It is only a case where it may be a matter of form but in imparting justice, the approach of the courts should be to see that the parties are not unnecessary put to inconvenience or are being subjected to further more heavy expense of litigation as well as more time to be consumed by the court before the matter is finally decided. I find sufficient merits in the contention of the learned counsel for the parties and prayer made by the parties themselves. It appears to be a matter of form than substance. When the file is before this court of the trial court and when the provisions of subsection 2 of section 13-B of the Act, 1955 are not imperative, I fail to see what useful purpose would be served or there may be any technical legal requirement of sending the parties to the trial court for getting the marriage dissolved by decree of divorce by mutual consent. In appropriate case, this course could have been adopted. One of the reasons for adopting this course may be that some time the parties may have taken the decision abruptly and in hurry and the court may consider that some reasonable time may be given to them to reconsider their decision and to give rethought to the matter. For this purpose also, I fail to see why the parties should be relegated in each and every case to the trial court. This can also be possible here by passing of the order on the joint application filed by the parties under section 13-B of the Act, 1955. In this case, as stated earlier, the parties have finally decided their disputes and they have no plan whatsoever in their mind to give second thought or reconsider their decision. From the conduct of the parties which I have seen through these proceedings as well as after talking to them there appears to be no chance of their reunion, to live together as husband and wife and to continue their marital life. This inference is clearly supported from the fact that along with the terms of settlement, the husband has come up with the draft of the amount of permanent alimony and that has been accepted by the wife. This decision cannot be taken to be in hurry or abruptly. It appears to be taken after due deliberation and consideration of all aspects of the matter. This Court cannot be oblivious of the fact that the parties are living separately for last more than four years and this revision application itself is pending before this Court for last more than 5 to 6 months. So in these facts and circumstances, I am of the considered opinion that it is not the case where the parties should be relegated to the trial court for getting their marriage dissolved by decree of divorce by mutual consent. All necessary ingredients to be fulfilled by the parties before their marriage is to be dissolved by decree of divorce by mutual consent, have been fulfilled in the present case. They have presented the petition jointly to this court. The parties are living separately for a period of more than a year before the

presentation of the petition in this court. From the application as well as after talking to them it is clear that they have not been able to live together. They have mutually agreed that their marriage should be dissolved by decree of divorce by mutual consent. So taking into consideration the totality of the facts of this case, I am satisfied that this petition under section 13-B of the Act, 1955 deserves to be granted and accordingly it is granted.

In Bijal Chandreshbhai Bhatt v. Chandreshbhai Sahdevbhai Bhatt (supra), this Court dissolved the marriage of the parties by passing a decree of divorce by mutual consent after holding that the waiting period under sub-section (2) of Section 13-B of the Act is not mandatory and can be dispensed with in appropriate cases.

In Uday Narendrabhai Bhatt v. Shivangi Narendrabhai Shastri (supra) and Maulin Girishchandra Pandya v. Riddhi w/o/. Maulin G. Pandya and d/o. Mahendra Shantilal Bhatt (supra), a coordinate Bench of this Court, placing reliance upon the judgment in Jyotiben v. Jigneshbhai Jaisukhbhai Oza (supra), dissolved the marriages of the respective parties by granting a decree of divorce by mutual consent.

Learned amicus curiae submitted that the intent and purpose of introducing a statutory waiting period of six months before a decree of divorce can be passed by mutual consent, in sub-section (2) of Section 13-B of the Hindu Marriage Act, 1955, is to give time and opportunity to the parties to reflect upon their move and to ensure that the consent of the parties for grant of divorce by mutual consent, as expressed in the petition would subsist till the time when the decree is actually passed. In this context, reference has been made to a judgment of the Supreme Court in Smt.Sureshta Devi v. Om Prakash (supra), wherein, the Supreme Court has discussed in detail, the legal logic behind the waiting period from six to eighteen months in Section 13-B(2) of the Act. The relevant extracts of the judgment are reproduced hereinbelow.

10. Under sub-section (2) the parties are required to make a joint motion not earlier than six months after the date of presentation of the petition and not later than 18 months after the said date. This motion enables the Court to proceed with the case in order to satisfy itself about the genuineness of the averments in the petition and also to find out whether the consent was not obtained by force, fraud or undue influence. The Court may make such inquiry as it thinks fit including the hearing or examination of the parties for the purpose of satisfying itself whether the averments in the petition are true. If the Court is satisfied that the consent of parties was not obtained by force, fraud or undue influence and they have mutually agreed that the marriage should be dissolved, it must pass a decree of divorce.

... ... ...

13. 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 advice 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 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 clear 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 bonafides 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.

Sub-section (2) requires the Court to hear the parties which means both the parties. If one of the parties at that stage says that "I have withdrawn my consent", or "I am not a willing party to the divorce", the Court cannot pass a decree of divorce by mutual consent. If the Court is held to have the power to make a decree solely based on the initial petition, it negates the whole idea of mutualitly and consent for divorce. Mutual consent to the divorce is a sine qua non for passing a decree for divorce under Section 13-B. Mutual consent should continue till the divorce decree is passed. It is a positive requirement for the Court to pass a decree of divorce. "The consent must continue to decree nisi and must be valid subsisting consent when the case is heard". [See (i) Halsbury s Laws of England, 4th edn. vol. 13 para 645; (ii) Rayden on Divorce, 12th edn. vol. 1 p. 291 and (iii) Beales v. Beales, [1972] 2 All ER 667 674].

Learned counsel for the petitioners has relied heavily on the judgments of this Court, reproduced hereinabove, wherein the statutory waiting period of six months, as envisaged in Section 13-B(2) of the Act, has been dispensed with, and it has been held that the said provision of law is directory and not mandatory. The main ground on which the Court has curtailed the period of six months in the above judgments, is that the parties to the marriage are living separately for long and the differences between them are beyond the scope of reconciliation. However, it would be necessary to advert to certain other judicial proceedings of the Supreme Court in this regard, that have a direct bearing and relevance to the issue to be determined by this Court.

In Anil Kumar Jain v. Maya Jain, reported in (2009)10 SCC 415, the Supreme Court held that it has power under Article 142 of the Constitution of India to convert proceedings under Section 13 of the Hindu Marriage Act, 1955, into one under Section 13-B and grant a decree for mutual divorce without waiting for the statutory period of six months, by applying the doctrine of irretrievable break-down of marriage. However, the Apex Court has categorically held, in no uncertain terms, that except for the Supreme Court, no High Court or Civil Court has the power to grant relief by invoking the doctrine of irretrievable break-down of marriage. This is what the Supreme Court has held:

28. It may, however, be indicated that in some of the High Courts, which do not possess the powers vested in the Supreme Court under Article 142 of the Constitution, this question had arisen and it was held in most of the cases that despite the fact that the marriage had broken down irretrievably, the same was not a ground for granting a decree of divorce either under Section 13 or Section 13-B of the Hindu Marriage Act, 1955.

29. In the ultimate analysis the aforesaid discussion throws up two propositions. The first proposition is that although irretrievable break-down of marriage is not one of the grounds indicated whether under Sections 13 or 13-B of the Hindu Marriage Act, 1955, for grant of divorce, the said doctrine can be applied to a proceeding under either of the said two provisions only where the proceedings are before the Supreme Court. In exercise of its extraordinary powers under Article 142 of the Constitution the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in Section 13-B of the aforesaid Act. This doctrine of irretrievable break-down of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution. Neither the civil courts nor even the High Courts can, therefore, pass orders before the periods prescribed under the relevant provisions of the Act or on grounds not provided for in Section 13 and 13-B of the Hindu Marriage Act, 1955.

30. The second proposition is that although the Supreme Court can, in exercise of its extraordinary powers under Article 142 of the Constitution, convert a proceeding under Section 13 of the Hindu Marriage Act, 1955, into one under Section 13-B and pass a decree for mutual divorce, without waiting for the statutory period of six months, none of the other Courts can exercise such powers. The other Courts are not competent to pass a decree for mutual divorce if one of the consenting parties withdraws his/her consent before the decree is passed. Under the existing laws, the consent given by the parties at the time of filing of the joint petition for divorce by mutual consent has to subsist till the second stage when the petition comes up for orders and a decree for divorce is finally passed and it is only the Supreme Court, which, in exercise of its extraordinary powers under Article 142 of the Constitution, can pass orders to do complete justice to the parties.

(emphasis supplied) The above principles of law are reiterated by the Supreme Court in Manish Goel v. Rohini Goel, reported in (2010)4 SCC 393, in the following terms:

12. In Anjana Kishore v. Puneet Kishore, this Court while allowing a transfer petition directed the Court concerned to decide the case of divorce by mutual consent, ignoring the statutory requirement of moving the motion after expiry of the period of six months under Section 13-B(2) of the Act. In Anil Kumar Jain, this Court held that an order of waiving the statutory requirements can be passed only by this Court in exercise of its powers under Article 142 of the Constitution. The said power is not vested with any other court.

13. However, we have also noticed various judgments of this Court taking a contrary view to the effect that in case the legal ground for grant of divorce is missing, exercising such power tantamounts to legislation and thus transgression of the powers of the legislature, which is not permissible in law (vide Chetan Dass v. Kamla Devi and Vishnu Dutt Sharma v. Manju Sharma).

14. Generally, no Court has competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass the orders or directions which are contrary to what has been injected by law. (Vide State of Punjab v. Renuka Singla, State of U.P. v. Harish Chandra, Union of India v. Kirloskar Pneumatic, University of Allahabad v. Dr. Anand Prakash Mishra and Karnataka SRTS v. Ashrafulla Khan).

The ratio of the judgments in Anil Kumar Jain v. Maya Jain (supra) and Manish Goel v. Rohini Goel (supra), is that the order of waiving the statutory requirements can only be passed by the Supreme Court in exercise of its power under Article 142 of the Constitution of India and that such power is not vested in any other Court.

In the background of the above legal position propounded by the Supreme Court, we may now advert to the grounds pleaded by the petitioners, in support of their prayers to curtail the statutory period of six months under Section 13-B(2) of the Act, and to direct that the petition for divorce by mutual consent be disposed of within a period of fifteen days. It has been averred in the petition, and submitted by learned counsel for the petitioners that the parties have not been cohabiting with each other or performing their marital obligations since 11.06.2011. As the marriage has broken down irretrievably and both the petitioners have mutually agreed that it be dissolved, the waiting period of six months ought to be curtailed. In this regard, reliance has been placed upon the judgments of the Supreme Court and this Court, quoted hereinabove.

The second ground advanced by the petitioners is that petitioner No.2 has been granted a Dependant VISA on the basis of her marriage with petitioner No.1, upon which she had gone to the United Kingdom to pursue further studies. The VISA would expire on 31.12.2013 and petitioner No.2 would have to apply for a Student VISA to the United Kingdom Immigrant VISA Unit, for which it would be necessary for her to produce a decree of divorce. It has been submitted that if the period of six months is not curtailed, petitioner No.2 would not be able to study further which would affect her career, therefore, there is urgency in the matter.

Insofar as the first ground is concerned, that is, that the marriage between petitioner No.1 and petitioner No.2 has broken down irretrievably, therefore the statutory period of six months under Section 13-B(2) of the Act should be waived, it is clear from the judgments of the Supreme Court reproduced hereinabove (some of which have been cited on behalf of the petitioners), that in curtailing the statutory period of six months and granting a decree of divorce by mutual consent, the Supreme has exercised power under Article 142 of the Constitution of India. This power is not available to any other Court in the land, including this Court. In Anil Kumar Jain v. Maya Jain (supra), the Supreme Court has clearly held, in no uncertain terms, that the doctrine of irretrievable breakdown of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution of India. Neither can the High Court, nor the Civil Court, pass orders before the periods prescribed under the relevant provisions of the Act, or on grounds not provided for in Section 13 and 13-B of the statute. This principle of law has been reiterated by the Supreme Court in Manish Goel v. Rohini Goel (supra).

The first ground advanced by the petitioners for truncating the statutory waiting period of six months envisaged under Section 13-B(2) of the Act, for the reason that their marriage has broken down irretrievably, is, therefore, not within the scope of adjudication of this Court, considering that such power can be exercised only by the Apex Court under Article 142 of the Constitution of India.

With regard to the second ground, namely, that the Dependant VISA of petitioner No.2 is to expire on 31.12.2013, it is noteworthy that there are no supporting documents to show whether petitioner No.2 had a Dependant VISA and the nature of the studies undertaken by her in United Kingdom. Moreover, there is nothing on record to show that a decree of divorce would be necessary before petitioner No.2 can apply for a VISA. No exceptional difficulty or hardship has been shown by the petitioners, who are well-aware that this would be one of the consequences of their filing the petition for divorce by mutual consent. Besides, hardship is not a ground envisaged under Section 13-B or 13-B(2) of the Act. Therefore, this contention of the petitioners cannot be accepted.

The petitioners have filed the application for divorce by mutual consent under Section 13-B of the Act on 09.10.2013. Along with the petition, an application under Ex.5 was filed which was not heard immediately. The petitioners, therefore, approached this Court by filing Special Civil Application No.16228 of 2013. This Court, vide order dated 23.10.2013, permitted the withdrawal of the above petition in view of an application for early hearing of Ex.5 to be filed by the petitioners. The learned Principal Senior Civil Judge, Kalol, was directed to consider the application, taking into consideration the difficulties faced by the petitioners. As a result thereof, the Trial Court has heard the application at Ex.5 and rejected it by the impugned order. The main ground for rejection of the application, as stated in the impugned order, is that the Trial Court has no authority to waive the statutory period under Section 13-B(2) of the Act.

Considering the judgments of the Supreme Court in Anil Kumar Jain v. Maya Jain (supra) and Manish Goel v. Rohini Goel (supra), the reason given by the Trial Court cannot be faulted.

Insofar as the other two judgments of this Court, relied upon by learned counsel for the petitioners, namely, Dr.Dhiren Harilal Garasia v. Mansu @ Mina Chamanlal Dangi (supra) and Jyotiben v. Jigneshbhai Jaisukhbhai Oza (supra), are concerned, it may be noted, with respect, that they were both rendered much before the judgments of Supreme Court in Anil Kumar Jain v. Maya Jain (supra) and Manish Goel v. Rohini Goel (supra). Now that the Supreme Court has clarified the legal position with regard to the scope and ambit of the powers to be exercised by the High Courts and Civil Courts with respect to the curtailment of the statutory waiting period of six months under Section 13-B(2) of the Act, there can be no doubt that such power can only be exercised by the Supreme Court under Article 142 of the Constitution of India, by invoking the doctrine of irretrievable breakdown of marriage and to do complete justice between the parties. This power is not available to the High Courts and Civil Courts.

In the other two judgments of this Court, namely, Uday Narendrabhai Bhatt v. Shivangi Narendrabhai Shastri (supra) and Maulin Girishchandra Pandya v. Riddhi w/o/. Maulin G. Pandya and d/o. Mahendra Shantilal Bhatt (supra), relied upon by the learned counsel for the petitioners, a concurrent Bench of this Court has placed reliance upon the earlier judgment of this Court in

Jyotiben v. Jigneshbhai Jaisukhbhai Oza (supra) while rendering these two decisions. It does not appear from a perusal of the said judgments that the judgments of the Supreme Court in Anil Kumar Jain v. Maya Jain (supra) and Manish Goel v. Rohini Goel (supra) were brought to the notice of the Court when those petitions were decided.

As a cumulative result of the above discussion, it follows that in view of the principles of law laid down by the Supreme Court in Anil Kumar Jain v. Maya Jain (supra) and Manish Goel v. Rohini Goel (supra), neither the Civil Courts nor this Court can pass orders to curtail the statutory waiting period of six months as prescribed under Section 13-B(2) of the Act, on the grounds not provided for in Sections 13 and 13(B) of the statute. Except for the Supreme Court, no High Court or Civil Court has the power to grant relief by invoking the doctrine of irretrievable breakdown of marriage.

Before parting with the case, this Court would like to place on record its appreciation for the assistance rendered by Mr.S.P.Majmudar, learned amicus curiae.

In view of the above judicial pronouncements and for reasons stated hereinabove, the petition fails and is rejected. Rule is discharged.

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