Gujarat High Court
Rupa Ashok Hurra vs Ashok G. Hurra on 9 September, 1996
Equivalent citations: (1996) 3 GLR 668
Author: B Patel
Bench: B Patel, S Dave
JUDGMENT B.C. Patel, J.

1. This Letters Patent Appeal is preferred by original petitioner No. 2 in the Hindu Marriage Petition and original respondent in the First Appeal, being aggrieved by the judgment and order passed by the learned single Judge (Coram: S.D. Shah, J.) on 15-3-1996 in First Appeal No. 1070 of 1987 (Reported in 1996(2) GLR 650).

2. Without passing the formal order of "admission", we have heard the matter as if it is admitted. We have given full opportunity to the learned Advocates appearing for the parties to make their submissions as if the appeal is finally heard.

3. Facts leading to the filing of the present L.P.A. succinctly stated, are as under:

3.1 The parties to the proceedings submitted a joint application before the City Civil Court, Ahmedabad as contemplated under Section 13B of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) for divorce by mutual consent on or about 21-8-1984, which has been numbered as H.M.P. No. 248 of 1984, wherein petitioner No. 1 is Ashok G. Hurra (hereinafter referred to as the husband) and petitioner No. 2 is Rupa (hereinafter referred to as the wife). This application for divorce by mutual consent was presented before the Registrar, City Civil Court, Ahmedabad, who admitted the application on the same day and kept over till six months. The proceedings were not placed before the Court at that time and the parties have not appeared before the learned trial Judge. Probably, the practice prevailing in the Court is that the matter should be kept over till six months in view of the provisions contained in Section 13B(2) of the Act. Section 13B(2) requires motion by both the parties. However, in the instant case, on behalf of the husband, an application Exh. 4 was tendered inter alia contending that the matter be placed before the Court for hearing. Accordingly, the application was placed before the Court for hearing on 15-4-1985. As the matter was placed on the Board for the first time and the Advocate for the wife being unaware (Exh. 4 being not a joint application), he requested the Court, vide Exh. 5, to grant time as wife was not informed and the matter was adjourned to 24-4-1985. On 24-4-1985 and 26-4-1985, the matter could not be proceeded on account of disturbance in the City. On 6-8-1985, Mr. Pathak, learned Advocate for wife filed his appearance. On 9-9-1985, the case was adjourned to 16-9-1985 and the Court conducted the proceedings in Chamber for reconciliation. The matter was adjourned to 30-9-1995 and in that date also, the matter was taken in chamber and the trial Judge tried for reconciliation and the matter was adjourned to 10-10-1985. The learned Advocates for the parties, on 10-10-1985 jointly requested for time as attempts were being made for reconciliation and the Court adjourned the matter to 21-10-1985. Thereafter on 21-10-1985, 31-10-1985 and 25-11-1985, the adjourned dates, the matter could not be taken up as the learned Judge was on leave. Thereafter, on 9-12-1985, the same was on Board and the learned Advocates jointly requested, vide Exh. 8, for time as the parties were negotiating for settlement and it was very likely that the matter may be

settled. On 18-12-1985 and 26-12-1985, the learned Judge was on leave and the matter was adjourned. On 10-1-1986, learned Advocate for wife submitted an application for adjournment as he was out of station and the case was adjourned to 24-1-1986. On 24-1-1986, learned Advocate for husband applied for time, vide Exh. 10, on the ground that the husband is unable to remain present as he is engaged in other works and the Court adjourned the matter to 17-2-1986. On that date the matter was adjourned to 7-3-1986. On 7-3-1986, the matter could not be taken up as the learned Judge was on leave and the matter was adjourned to 27-3-1986 and on that date wife withdrew her consent stating in the application that "dissolution of their marriage is not in the interest of the applicants and that there is full scope for a reunion and there is every possibility to save their marriage." To this, the husband filed a reply, Exh. 12, denying the contention and raising a plea that withdrawal of consent is not according to law and consent cannot be revoked. Wife filed an affidavit in rejoinder and pointed out that it is open for her to revoke the consent and she is legally entitled to withdraw her consent. The learned Judge of the City Civil Court, after hearing the parties, following an observation of the Karnataka High Court with respect to consent, reported in AIR 1983 Karnataka 235 in the case of K. Krishnamurthy Rao v. Kamalakshi, taking a view that "the consent must continue to decree and must be valid, subsisting consent when the case is heard", dismissed the H.M.P. by judgment and order dated 17-10-1986 (pages 153 to 163), holding that when the wife has revoked her consent, it is not open for the Court to grant a decree of divorce, i.e., divorce by mutual consent under Section 13B of the Act.

4. Husband preferred a Civil First Appeal before this Court (being No. 1070 of 1987) against the order passed by the trial Court dismissing the H.M.P. Learned single Judge of this Court (Coram: S.D. Shah, J.), as stated hereinabove, allowed the appeal by quashing and setting aside the aforesaid order passed by the trial Court and granted a decree of dissolution of marriage solemnized between the appellant and the respondent with effect from the date of the petition. Aggrieved by that order, the wife has preferred this L.P.A.

5. Thus, before the Court could make an inquiry as contemplated under Sub-section (2) of Section 13B of the Act, the content is withdrawn and, therefore, the learned Judge passed an order. Section 23(2) of the Act provides that before proceeding to grant any relief under the Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties and the Court may adjourn the proceedings for this purpose. From the Rojnama, it appears that such attempts were made more than once. The trial Court, atleast on two occasions made attempts for reconciliation, on 19-9-1985 and 30-9-1985, and even thereafter learned Advocates jointly applied on two occasions, on 10-10-1985 and 9-12-1985 for reconciliation and settlement.

6. The sole object of Section 23(2) of the Act is to give effect to the laudable principle of public or social policy that the marriage ties should not be easily broken and that therefore, the formal sundering of the tie ought atleast be preceded by an earnest effort on the part of the Court before which the case comes up for trial, to bring about a reconciliation, it being rightly assumed that a human Judge acting with the moral strength and prestige of his judicial position would be more likely to succeed where interested parties have failed in awakening the disputing spouses to the

responsibilities of their position. Keeping this in mind, as indicated earlier, atleast on two occasions, learned Judge tried for reconciliation and it was never disclosed before him that the husband will not be in a position to accept the appellant wife as his wife as he has remarried. Before reconciliation proceedings, he got remarried. Then, what was the purpose in his participating in the reconciliation proceedings?

7. Learned Advocate for the appellant-wife mainly raised the following contentions:

(1) As held by the Apex Court, consent can be withdrawn any time before the decree is passed and there is no provision in the law that consent can be withdrawn only during the interregnum.

(2) While withdrawing consent, the party withdrawing consent is not required to give any reason.

(3) While passing a decree of divorce under Section 13B(2) of the Act, the marriage could be declared as dissolved only with effect from the date of the decree and not from the date of application.

(4) There is no provision in the Act for granting a decree of divorce on the ground of irretrievable breakdown of marriage, and therefore, on that ground, no decree could have been passed. Husband has admitted before the learned single Judge that he remarried in August 1985 and therefore, he cannot be permitted to take advantage of his own wrong.

(5) The dialogue which took place between the parties and the learned Judge should not have formed part of the judgment and the decision that may be rendered by the learned Judge should not have been influenced by the facts stated before the learned Judge in Chamber, as the Court is required to decide the matter on the basis of pleadings and evidence, if any.

8. As against this, learned Advocate for the respondent-husband raised the following main contentions:

(1) The consent theory is accepted not on the ground of fault or guilt theory, realizing the parties should not play with the allegations made against each other.

(2) When both are guilty, no interest would be served by keeping the marriage in existence and should be dissolved by a decree of divorce.

(3) Irretrievable breakdown theory has been accepted and a decree dissolving marriage can be granted on that ground.

(4) Learned single Judge has erred in reading the judgment of the Apex Court interpreting the judgments delivered by the High Courts at Kerala, Punjab and Haryana and Rajasthan.

9. Section 13B of the Act, which reads as under:

13B. 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.

10. Thus, it is clear that after an application being tendered in accordance with Section 13B of the Act, as required under Section 13B(2), the parties to the proceedings are required to move the Court not earlier than six months after the date of the presentation of the petition referred to in Sub-section (1) and not later than 18 months after the said date, and if the petition is not withdrawn, then the Court has to be satisfied after hearing the parties and making such inquiry as it thinks fit that a marriage has been solemnised and that the averments in the application are true. On arriving at such a satisfaction, the Court may pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

11.1 The learned single Judge, in paragraph 72 of the judgment held as under (at page No. 682 of GLR):

...The Apex Court has in the aforesaid cases Chandrakala Menon v. Vipin Menon, ; V. Bhagat v. D. Bhagat ; Chandrakala Trivedi v. Dr. S.P. Trivedi and Romesh Chander v. Smt. Savitri JT 1995(1) SCC 362 granted divorce even at the stage of the Apex Court and in the fact situation obtaining before this Court, this Court has no hesitation in holding that it is one case where no reunion was possible, no reconciliation between the parties was also possible and that when the husband has already remarried one Sonia and has male child out of the said wedlock, no useful purpose will be served by refusing decree of divorce but it would be just, legal, proper and equitable in every sense of the terms that the Court must pass a decree for dissolution of marriage between the appellant-husband and the respondent-wife.

11.2 Sub-para (4) of paragraph 69 of the impugned judgment reads as under (at page No. 681 of GLR):

Though I am bound by the decision of the Apex Court in the case of Smt. Sureshta Devi (supra), even if observations made therein are regarded as obiter observations, it is recorded that on the date of the decree, the wife has already revoked her consent by tendering application at Exh. 11, once again on the ground which was false and jejune to her knowledge, namely possibility of reunion.... In such a fact situation the wife filed application at Exh. 11 stating that she changed her mind

because she thouht that there was possibility of reunion and that she was, therefore, revoking her consent. It was not a true or correct ground but a false pretext, ruse, or jejune or non-existent ground put forward by her to justify revocation of her consent.

11.3 In paragraph 70, the learned single Judge held as under (at page No. 681 of GLR):

In the absence of the binding precedent of the aforesaid case of Sureshta Devi (supra) this Court would have no hesitation in holding that Section 13B(2) makes it obligatory upon the Court by use of the mandatory word "shall" that once the period of interregnum or transitional period starting from the date of the presentation of the petition till the expiry of the period of 18 months from the date of the petition was over, if the petition is not withdrawn or consent is not revoked in the meantime, the Court shall pass a decree. It may be noted that the limited enquiry which the Court is expected to make under Section 13(2) is to the effect that:

(i) The marriage has been solemnised;

(ii) The averments made in the petition, namely,

(a) That the parties have separated for a period of one year or more, and

(b) They have not been able to live together, and

(c) That they have mutually agreed that the marriage should be dissolved are satisfied.

11.4 In paragraph 71 of the judgment, the learned single Judge held as under (at page No. 682 of GLR):

The Court has to ascertain that the aforesaid averments made in the petition, consistent with the requirement of Section 13B(1) were true and if the Court was satisfied that they were true and that the consent either of the spouses was not vitiated under Section 23(1)(bb), it shall pass a decree of divorce. In the opinion of this Court, therefore, withdrawal or revocation of the consent by either spouse after the expiry of the period of 18 months was discouraged by the legislature as after period of interregnum, revocation of consent was not permissible and that it was not essential that such consent must subsist till the decree of dissolution is passed. However, this expression of opinion by this Court is not inconsistent with the binding precedence of the Apex Court and therefore, I hold that the respondent-wife had right to revoke or withdraw her consent at any time before the decree of divorce is passed but in the opinion of this Court such revocation or withdrawal must be based on some sustainable ground and the ground advanced by the respondent-wife was a mere pretext, ruse, jejune and non-existent as according to her reunion was never possible between her and the appellant-husband. There were other reasons as to why she revoked the consent which were paramount in her mind and it is unfortunate that in such fact situation the trial Court refused a decree of dissolution of marriage.

12. Thus, in short, the conclusion of the learned single Judge is that - (i) the wife had right to revoke or withdraw her consent at any time before the decree of divorce is passed, (ii) but such revocation must be based on some sustainable ground.

13. The learned single Judge has proceeded on the footing that marriage between the parties is irretrievably broken and reunion is not at all possible; when the husband has already remarried one Sonia and has a male child out of said wedlock, no useful purpose will be served by refusing a decree of divorce but it would be just, legal, proper to grant a decree of dissolution of marriage between the parties, and granted the same from the date of petition.

Section 13B(2) - Can a Party withdraw or revoke the Consent given under Section 13B(2) of the Act?

14. In the case of K.I. Mohanan v. Jeejabai , the question which was emphatically urged was that once an application under Section 13B of the Act is filed on mutual consent of both the spouses, one of them cannot unilaterally withdraw the consent resulting in the dismissal of the petition. In paragraph 5, the High Court held that satisfaction of the Court after hearing the parties and after conducting an enquiry necessarily contemplates an opportunity for either of the spouses to withdraw the consent. The Court held as under in paragraph 8 of the judgment:

We are satisfied that the withdrawal of consent by the respondent for divorce by mutual consent has been unequivocally expressed by her and it seems to be permissible on reading of Sub-section (2) of Section 13B of the Hindu Marriage Act.

15. In the case of Harcharan Kaur v. Nachhattar Singh reported in AIR 1988 P and H 27, a Division Bench of the Court considered whether either party is at liberty to revoke its consent any time before the petition is finally disposed of. In paragraph 11 of the judgment, the Division Bench held as under:

In our view, unless the parties to the petition under Section 13B of the Act, who have mutually consented to have the marriage dissolved, continued to singnify their mutual consent for the dissolution of the marriage right up to the date of decree, the marriage cannot be dissolved under Sub-section (2) of Section 13B of the Act merely on the basis that six months earlier the parties had together presented the petition for dissolution of marriage by mutual consent. Either of the parties to the petition under Section 13B, that is, husband or wife, is at liberty to revoke its consent any time before the petition is finally dispossed of; and if the other party is still keen to have the marriage dissolved, the other provisions of the Hindu Marriage Act are still available for the grant of necessary relief if a case is made out for the same. The object of Section 13B is to provide an additional speedy remedy to the husband and wife to have the marriage dissolved if even after sufficient efflux of time both of them find, that it is not possible for them to continue as husband and wife any further. Obviously, if both the parties agree, the decree of divorce can be granted by mutual consent under Section 13B and if one of them fails to agree and does not want to oblige the other party by extending the requisite consent to the divorce, decree of divorce cannot be passed under Section 13B of the Act. For that, other provisions of the Act have to be resorted to.

16. With regard to "consent revocability" the High Court also considered para 645 of Halsbury's Law of England, Fourth Edition, Volume 13 at page 323, the relevant part of which is as under:

.... e consent must continue to decree nisi and must be valid subsisting consent when the case is heard, remaining operative as the expression of the respondent's state of mind upto the moment when the decree is granted: Beales v. Beales, 1972(2) All ER 667 at page 674.

17. In the case of Santosh Kumari v. Virendra Kumar reported in AIR 1986 Raj. 128, it appears that the parties appeared before the learned District Judge on 13-8-1984 and moved a joint application stating that the parties were desirous of getting a decree of dissolution of the marriage by mutual consent and, therefore, the matter may be taken up on that very day. Another application purporting to be under Section 13B was also jointly filed on the same day stating therein that the parties had been living separate since 15-10-1979 and it has not been possible for them to live together despite the efforts made by their friends and relations and, therefore, it was in the interest of both of them to obtain a decree for dissolution of the marriage. It was mentioned in the joint application besides other things that the application earlier filed by the husband on 20-10-1982 under Section 13 of the Act may be deemed to be a joint application of the parties with their mutual consent and a decree for dissolution of the marriage may be passed under Section 13B of the Act. The learned District Judge granted a decree for dissolution of the marriage holding that he was satisfied that the application was voluntarily filed by the parties with their mutual consent. However, the wife filed an appeal against the said decree of divorce, raising two contentions:

(i) that the learned District Judge had no jurisdiction to pass a decree for dissolution of marriage by mutual consent because as a matter of fact there was no joint application by the parties before him till 13-8-1984 and the application dated 13-8-1984 could not be deemed to be a joint application envisaged under Sub-section (1) of Section 13B as well as a motion under Sub-section (2) thereof because such a motion could not have been made not earlier than six months after the date of the joint petition filed under Sub-section (1) and not later than eighteen months after the same date and as joint application and motion has been made by the same application, the decree is a nullity being against the provisions of Section 13B.

(ii) that the order passed by the learned District Judge also relates to matters other than the divorce with mutual consent and therefore, the directions regarding matters extraneous to the grant of a decree for divorce deserves to be set aside.

The Rajasthan High Court's decision makes it clear that the parties jointly requested to exercise the jurisdiction under Section 13B of the Act by treating earlier application under Section 13 of the Act to be that under Section 13B of the Act and another joint application under Section 13B(2) of the Act was submitted to pass a decree. Under these circumstances, the Court rejected the contentions of the appellant-wife and held that the District Judge was right in treating the application dated 20-10-1982 as an application for divorce by mutual consent, and that even if the motion was not made within 18 months from 20-10-1982, the Court would not lose its jurisdiction to entertain the same and pass a decree in accordance with Sub-section (2) Section 13B. The Court further held that when the parties cannot live together, no undue importance to the form of the application or the

time within which it has been made need not (sic.) be attached.

18. In the case of Beales v. Beales, reported in 1972 All ER 667 (at page 674), the question whether consent is irrevocable or not has been considered. It was argued that once a petitioner received the respondent's consent and proceeds with the petition, there is a binding agreement from which neither can resile. Referring to the provisions of the English Act which stipulates that 'the respondent consents to a decree being granted' it was held that this is a deliberate use of the present tense when "has consented" could have been used. It was, therefore, held that the only possible conclusion is that the consent must continue to decree nisi and consequently must be a valid, subsisting consent when the case is heard. It must remain operative as the expression of the respondent's state of mind upto the moment when the decree is granted.

19. The Apex Court, in the case of Sureshta Devi , after considering the decisions referred to hereinabove, held as under in paragraph 13 of the judgment:

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 enquiry, the Court gets no jurisdiction to make a decree of divorce. If the view is otherwise, the Court could make an inquiry and pass a divorce decree even at the instance of one of the parties and against the consent of other. Such a decree cannot be regarded as decree by mutual consent.

(Emphasis supplied by us) The Apex Court in paragraph 14 has made the position absolutely clear, which paragraph reads as under:

Sub-section (2) requires the Court to hear the parties which means both the parties. If one of the parties at the 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 based on the initial petition, it negates the whole idea of mutuality and consent for divorce. Mutual consent to the divorce is a sine qua non for passing a decree for divorce under Section 13B. 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....

The Apex Court has in unambiguous terms laid down that without mutual consent to the divorce, no decree can be passed under Section 13B and that the consent must coninue till the decree nisi and must be valid and subsisting consent when the case is heard. In the instant case, even before the trial Court could make an inquiry, the wife withdrew the consent. Therefore, the trial Court was right in dismissing the application under Section 13B. Law does not require that the party withdrawing the consent shall disclose reasons for withdrawal of the consent or that the Court should be satisfied that the reason for withdrawal of the consent is on some sustainable grounds. If there is no consent, it is always open for the other party to approach the Court under other provisions of the Act and the party must resort to the other provisions.

20. We may note here the meaning of consent as given by Rayden on Divorce (12th Edi. Page 221):

The point of time at which consent is relevant for the pronouncement of the decree nisi is the date of hearing of the petition.

Thus, if the consent is withdrawn before the effective hearing, there is no consent and resultant effect is, Court has no jurisdiction to pronounce a decree of divorce on the basis of mutual consent.

21. The Apex Court has clearly laid down that the consent must be valid and subsisting till the decree is passed and only then the Court will have jurisdiction to pass a decree under Section 13B.

22. The learned single Judge in para 71 has opined that (1) withdrawal or revocation of consent after expiry of 18 months was discouraged; (2) After interregnum, revocation of consent was not permissible; (3) It is not essential that consent must subsist till the decree of dissolution is passed and the opinion expressed is not inconsistent with the law laid down by the Apex Court holding that the respondent-wife can withdraw her consent at any time before the decree is passed. After expressing this opinion, the learned single Judge has opined that revocation of consent must be based on some sustainable grounds.

We must mention here that the learned single Judge, after expressing the opinion as aforesaid, has correctly held that "I hold that the respondent-wife had right to revoke or withdraw her consent at any time before the decree of divorce is passed". However, before the finding, the learned single Judge has expressed the opinion that "it was not essential that such consent must subsist till the decree of dissolution is passed", and that "this expression of opinion is not inconsistent with the binding decision of the Apex Court."

Honourable Supreme Court has, in unequivocal terms, observed that if there is no mutual consent at the time of inquiry, the Court gets no jurisdiction to make a decree of divorce and that consent must continue to decree nisi. Mutual consent should continue till the divorce decree is passed, and, therefore, we feel that the opinion expressed by the learned single Judge is not in conformity with the law laid down by the Apex Court.

23. Legislature has not discouraged the revocation of consent after interregum. That is not the period to be strictly adhered to like a law of limitation for a suit. The consent must continue till decree is passed as per law laid down by the Honourable Supreme Court. Legislature has not provided that revocation must be based on some sustainable grounds. Even Apex Court, while laying down the law, in case of Sureshta Devi (supra) in para 14 has indicated positive requirement for the Court to pass a decree for divorce and that would be lacking even if the spouse says that "I have withdrawn my consent" or "I am not a willing party to the divorce". Thus, when legislature has not provided that party withdrawing consent cannot withdraw the consent except on sustainable ground and the Apex Court has indicated that mere withdrawal is sufficient, in our opinion, the learned single Judge cannot be said to be justified in holding that revocation must be based on some sustainable grounds. In our view, the remedy consuming much less time is lost but the remedy under Section 13 is not lost.

24. Learned Advocate submitted that the law provides divorce by mutual consent but that consent as stated in the application, should continue till the decree nisi. In a given case, just before completion of 18 months when wife is desirous of withdrawing the consent, if the Courts are closed on account of riotous situation or if the wife is sick and is not able to appear before the Court or if the wife is away or if on account of any situation, could not come to the Court where the petition is filed, would she lose her right of withdrawing her consent? The period mentioned in Sub-section (2) is not to be understood to be a period of limitation like a period of limitation prescribed for a suit. Even in a given case, the Court can pass a decree before completion of six months also. Otherwise, if law is to be applied very strictly, then no application under Sub-section (2) can be made earlier than six months after the presentation of the petition. There are number of decisions which indicate that it is not necessary that the Court must wait for six months. In the same way, it is not necessary that the monent 18 months period is over, the party has no right to withdraw the consent and Court must pass a decree under Section 13B. The Supreme Court has in clear terms held that consent can be withdrawn at any stage before the inquiry and in any event, the consent must subsist at the time when the Court makes an inquiry. In view of the Apex Court's decision in Sureshta Devi's case (supra), we are bound to say that either party is entitled to withdraw the consent at any time before the decree is passed and it is not necessary that the withdrawal must be during interregnum of six months to 18 months. Before the order is passed, the Court has to make an inquiry. The inquiry, for various reasons, may not commence even before 18 months are not concluded. Therefore, in our view, section contemplates that reasonable period during which inquiry should be made and before the inquiry if consent is withdrawn, the Court has no jurisdiction to pass a decree by mutual consent as consent is absent. We refer as "reasonable period" as several Courts have taken the view that even before six months period, Court can pass a decree and even if period of 18 months expired, Court has jurisdiction to pass the order after making an inquiry, if the Court is satisfied about the correctness of the contents of the application.

25. Section 13B of the Act casts a duty on the Court, not only to satisfy that consent is in accordance with law but also to satisfy about the averments made in the petition. The Court must be satisfied that averments made in the petition are true. The Court, for satisfying itself, has to record the evidence of the parties on oath. After recording the evidence, Court will be in a position to reach and record a finding, but before that stage, if the consent is withdrawn, the Court has no jurisdiction. Law does not require the Court to investigate into the reasons of withdrawal or justiciability of the same. If the averments are made in the petition to the effect that husband has returned all the articles, i.e., "Stridhan" to the wife and that wife is not claiming amount of maintenance and that she has waived the right of maintenance then it is the duty of the Court to satisfy about the correctness of these averments. Whether statements made in the petition are true or not are to be ascertained. If the Court has to pass the decree of dissolution of marriage under Section 13B without inquiry, the Court cannot reach the satisfaction. As held by the Apex Court in Sureshta Devi's case (supra) in paragraph 13, if Court makes an inquiry at the instance of one of the parties against the consent of other and thereafter the decree is passed, the same cannot be regarded as a decree by mutual consent. Hence, inquiry is not an idle formality. Therefore, even if inquiry is not made before the period of 18 months, right is not lost and before inquiry if the consent is withdrawn, Court will have no jurisdiction to pass a decree of dissolution of marriage under Section 13B of the Act. In the instant case, in our view, before inquiry, consent was withdrawn and hence Court has no jurisdiction

to pass a decree.

26. The learned single Judge has held that reunion is not possible and hence the Court must pass a decree for divorce. In our opinion, in view of discussion aforesaid, there is no extraordinary feature to warrant a grant of divorce on the basis of pleadings and on account of conduct of husband without a full trial. Moreover, as held by the Apex Court, irretrievable breakdown of marriage is not a ground by itself to grant a decree of dissolution of marriage V. Bhagat v. D. Bhagat. If the reason given by the learned single Judge in para 71 is accepted, then in case of second marriage which takes place during subsistence of the first marriage, the first marriage should be dissolved as person marrying during the subsistence of first marriage may not like to live with first wife or the husband as the case may be, and that the reunion is not possible.

27. As pointed out by Punjab and Haryana High Court, in the case of Harcharan Kaur (supra) "remedy under Section 13B of the Act is an additional speedy remedy and is based on concept of mutuality. In case of desertion under Section 13(l)(ib) of the Act, other spouse must have deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. However, both spouses are consenting then instead of two years, one year period is provided. Again within a short period after presenting the joint petition Court can be moved under Section 13B(2) of the Act but if the consent is withdrawn by one, other can file a petition under Section 13(1)(ib) of the Act. That right is not lost. In the instant case, as parties were not staying together, immediately on completion of two years, (on the date of withdrawal of consent), either party could have filed a petition on the expiry of time as provided under Section 13(1)(i-b) of the Act and in fact on that ground, subsequently, the husband has filed a petition, which is pending even today.

28. In the case of Chandrakala Menon v. Vipin Menon, reported in 1993(2) SCC 6, husband was a qualified Engineer and wife was doing her research for the degree of Ph. D. A daughter born out of the wedlock was living with her maternal grandparents at Bangalore. Parties filed a joint petition for divorce by mutual consent on 3-7-1992. Husband filed an application for custody of the child before the Family Court at Bangalore. Another divorce petition filed by the husband was pending before the Family Court at Bombay. Husband came to see his daughter and took her away to Bombay whereupon maternal grandfather lodged a complaint at the police station alleging that the husband and his sisters kidnapped Soumya, the granddaughter. Chief Metropolitan Magistrate took cognizance of the matter and directed the husband to produce the child on May 15, 1992. Father did not produce the child and sought an adjournment by a telegram. The Magistrate refused to grant adjournment and passed an order to the effect that maternal grandfather was entitled to the custody of the child and directed the husband to hand over the child to the police so that custody be restored to the maternal grandfather. The Magistrate further directed that if the child is not produced before the police, then the police should register a case against him and also proceed to declare him a proclaimed offender. The order was challenged under Section 482 of the Cr. P.C. The High Court quashed the order of the Magistrate by reaching a finding that the father being a natural guardian of the child, could not be charged with the offence of kidnapping. The matter was carried to the Supreme Court by the wife and her father. The Apex Court was of the view that for doing complete justice to the parties, it is necessary to settle all the disputes pending between them. Therefore, in

the facts of the case, observing that the "petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 (the Act) is pending since July 3, 1992", the Apex Court granted decree of divorce by mutual consent. The custody of daughter was ordered to be given to the wife with permission to the husband to visit his daughter. Therefore, in that case, the consent subsisted at that stage of entertaining an application for divorce by mutual consent. The facts of the instant case, as discussed above, are far too different than the aforesaid case and a distinctive factor being that the consent is withdrawn and husband created a situation which is uncalled for.

29. Several decisions were pointed out about relaxation of period under Section 13B(2) of the Act. But in all the cases, there was consent by both the parties. In the case of Krishna v. Satishlal AIR 1987 P and H 191 question was raised whether a matrimonial Court can dissolve a marriage by a decree of divorce between two Hindus on the basis of compromise entered into between the parties during the pendency of the divorce petition without following the procedure prescribed by Section 13B(2) and without satisfying the requirements of Section 23(1)(c) of the Act? In that case, several decisions are noted. It appears that parties litigating since long, if at a later stage they jointly move the Court under Section 13B of the Act, the Court can dissolve a marriage by a decree of divorce between two Hindus on the basis of a compromise entered into between the parties during the pendency of the divorce petition without strictly following the procedure under Section 13B(2) of the Act, but on satisfying itself of not only requirements of Section 23(1)(c) but also of Section 23(1)(bb) of the Act. Thus, when husband and wife are jointly requesting for dissolution of marriage during the pending proceedings for divorce under Section 13, on being satisfied, the Court may not insist to follow strict procedure, under Section 13B of the Act. One must not forget that consent continues and is not withdrawn.

Dissolution of Marriage by Court - Effective from date of Decree or from the date of Application?

30. On behalf of the wife, it has been pointed out that the learned single Judge seriously erred in reading Section 13B of the Act because Section 13B(2) specifically provides that the Court could pass a decree of divorce declaring the marriage to be dissolved only with effect from the date of decree, and not from the date of application. Learned Advocate pointed out that at as many as three places, the learned single Judge has held that the marriage must be dissolved immediately; however, in the operative part of the judgment, it is held that the marriage is dissolved from the date of the petition, i.e., 21-8-1984. Learned Advocate submitted that this order is contrary to the provisions of law. He further submitted that the Court has no power to inquire about the reasons why the consent is being withdrawn and whether the reasons which may be assigned by the party withdrawning the consent are just and proper or not. Yet, learned Advocate, referring to para 66 of the judgment pointed out that during discussion with the appellant in chamber for reconciliation, learned Judge expressed the opinion that divorce must be granted from the date of petition to put an end to all other litigation. This suggest that the Court was determined and had already judged the issues according to learned Advocate for the appellant.

31. It appears from paragraphs 53, 54 and 55 of the impugned judgment that the trial Court disposed of the application on 17-10-1986. On 15-9-1994, husband filed petition for dissolution of marriage against the wife on the ground of unchastity of the wife alleging large number of

pornographic relations which she is alleged to have with her father and some other persons also. It is also alleged in the said application that the marriage may be dissolved in view of Section 13(1)(i-b) of the Act because the wife has deserted him for a continuous period of not less than two years. On 1-8-1994, wife filed a suit against the husband wherein she prayed for permanent injunction restraining the husband from transferring his asset to the name of his second wife Sonia or to the name of their child Prasad. Thereafter, the husband filed a criminal complaint under Sections 497 and 498 of the Indian Penal Code against the wife on 10-10-1994. It is thereafter that the wife filed a criminal complaint against the husband and Sonia under Section 494 of the Penal Code, on 4-11-1994. Learned Advocate submitted that if during the pendency of the H.M.P. proceedings before the trial Court, the wife would have known that the husband has remarried one Sonia, she would have filed a complaint immediately and would not have waited till August 1994. Learned Advocate has submitted that the learned single Judge has observed at various places in the judgment that the husband has married Sonia and a child is born out of the wedlock. According to his submission, the second marriage, (as observed by the learned single Judge), is in contravention of Section 17 of the Act, to which provisions of Section 494 and 495 of the Penal Code shall apply and for which a complaint is already filed before the competent Court. Learned Advocate for wife submitted that indirectly, by passing a decree from the date of petition, the act which is illegal is legalised and indirectly, prosecution is quashed. He submitted that in view of Section 15 of the Act, even if marriage is dissolved by a decree of divorce then till the period of preferring an appeal expires, or if an appeal is presented but has been dismissed, only then it is lawful for either party to marry again. Therefore, according to his submission, a party is entitled to marry again only after waiting for the period prescribed under the law and after ascertaining the fate of the appeal in case such an appeal is filed. In the instant case, the husband has the audacity to commit a wrong by marrying even before the divorce petition is decided, much less the appeal proceedings. Learned Advocate for wife submitted that this act is punishable under the Penal Code, and deserves no sympathy because he has married a woman who is a practising lawyer in the High Court. He further submitted that when the law does not permit to dissolve the marriage with effect from the date of petition but it permits the marriage to be dissolved only from the date of decree, the marriage could not have been dissolved from the date of the application.

32. He further submitted that the Court is required to consider the conduct of a party and if the conduct of the party is not acceptable under the law, the Court should not have shown any sympathy for such a party. He submitted that out of all the decisions cited at the Bar, in not a single case the Court has dissolved the marriage from the date of application and in no case Court has dissolved the marriage where either party has remarried during the pendency of the proceedings. He further submitted that if the effect of the judgment is given, then the marriage which is otherwise illegal, would stand legalised under the order of the learned single Judge by giving retrospective effect to the dissolution of the marriage. In our opinion, it would suffice to say that section empowers to grant a decree of dissolution of marriage with effect from the date of decree. We find ourselves unable to agree with the learned single Judge in this respect. We hold that even if such a decree of dissolution could have been granted, it could not have been granted from the date of the petition, but it could have been granted only from the date of the decree.

Can marriage be dissolved on the ground of irretrievable breakdown of marriage?

33. In the case of V. Bhagat v. D. Bhagat , the divorce petition was pending for more than eight years and with a view to expedite its disposal, the same was transferred from the District Court to the High Court. As observed in paragraph 10 of the judgment, even the petition was at the stage of trial when the matter was taken by the Apex Court in or about November 1993. Cross-examination of the petitioner alone took one full year. Cross-examination of the respondent was yet to begin. Both the parties were well settled and the children were grown up and were on their own. The husband called the wife an adulteress and the wife called the husband a lunatic. The Court was of the opinion that marriage between the parties should be dissolved under Section 13(1)(i-a) of the Act and did so accordingly. However, in paragraph 21 of the judgment, the Apex Court observed as under:

21. Before parting with this case, we think it necessary to append a clarification. Merely because there are allegations and counter-allegations, a decree of divorce cannot follow. Nor is mere delay in disposal of the divorce proceeding by itself a ground. There must be really some extraordinary features to warrant grant of divorce on the basis of pleadings (and other admitted material) without a full trial. Irretrievable breakdown of the marriage is not a ground by itself.

34. Learned Advocate for the appellant submitted that the learned single Judge was at an error in taking into consideration the ground that the marriage is irretrievably broken. Learned Advocate for the wife submitted that an amendment in the Act was sought to be introduced by Bill No. 23 of 1981, whereby three new sections were sought to be inserted in Section 13 as Sections 13/C, 13/D and 13/E. In the proposed Section 13/C, divorce on the ground of irretrievable breakdown of marriage was proposed. He submitted that had the Parliament passed the Bill and amended the Act, the Court was empowered to grant a decree of divorce on the ground that the marriage has broken down irretrievably. Learned Advocate submitted that the Bill has lapsed and till today, there is no law for dissolution of marriage on the ground that the marriage has broken down irretrievably. He further submitted that till the Parliament has recognised that right, divorce cannot be granted on such a ground. The law confers right on either party to a marriage for judicial separation on any of the grounds specified in Sub-section (1) of Section 13 and in case of wife, in addition to that on any of the grounds specified in Sub-section (2) thereof. It is open for the wife when she finds that her husband has married again during the subsistence of the marriage to ask for a judicial separation instead of divorce. It is for her to take the decision. Section 13 enumerates the grounds under which the Court can dissolve the marriage by a decree of divorce. Learned Advocate for the appellant-wife submitted that under Section 13(1)(i), if the husband had voluntary sexual intercourse with any other woman after solemnization of the marriage, she is entitled to have a decree of divorce on that ground. Husband has no right to claim decree on the ground that he has Temarried.

35. The Apex Court in the case of V. Bhagat v. D. Bhagat (supra) in paragraph 21 has pointed out that merely there are allegations and counter-allegations, or there is delay in disposal, would not constitute sufficient grounds. There must be extraordinary features to warrant grant of divorce on the basis of pleadings without a full trial. The Apex Court has pointed out that irretrievable breakdown of marriage is not a ground by itself. In the case on hand, so far as wife is concerned, she merely filed an application under Section 13B(1) and not under Section 13B(2), of the Act, participated in reconciliation proceedings and thereafter withdrew her consent. While in the case of husband, he filed an application under Section 13B(1) of the Act and after six months, he alone

moved the application which is again not in spirit of Section 13B(2) of the Act. Thereafter, during the pendency of the proceedings, he remarried and thereafter participated in reconciliation proceedings. If wife prays for a divorce in this situation, it may be considered as an extraordinary feature because her husband has remarried and she may not like to stay with him or them. For the reasons stated, they were not staying together and the incident of second marriage of husband had made the situation worst for her. Therefore, for a wife, it may be an extraordinary feature for seeking divorce without a trial, but not for the husband. In the absence of extraordinary features, and as husband has committed a wrong, he cannot plead that divorce be granted on the ground of irretrievable breakdown of marriage. In view of the Apex Court's judgment, irretrievable breakdown of marriage itself is not a ground. Secondly, Parliament has yet not amended the provision. That proposed provision refers to conduct of the party. Thus, we find no substance in the submission made by learned Advocate Mr. Pandya for husband in this respect.

36. We would refer to the decision of the Apex Court in the case of Prakash Chand Sharma v. Vimlesh reported in 1995 Suppl. (4) SCC 642. The husband therein had remarried during the pendency of second appeal preferred by wife against the divorce. The said appeal was delayed by three days, but it was instituted and pending on the date of second marriage, the Apex Court held that marriage was hit by Section 15 of the Act. Husband pleaded that divorce should be granted on the ground of irretrievable breakdown of the first marriage, particularly in view of his remarriage and birth of a child out of the remarriage. Court held that husband cannot be given benefit of his own wrong. Equity demands clean hands. Therefore, in the instant case, in view of the aforesaid decision, husband cannot ask for a decree of dissolution of marriage on the ground of irretrievable breakdown of the marriage.

Can this Court pass a decree in the facts and circumstances of the instant case, as has been done by Hon'ble Supreme Court in various cases?

37. In the case of Chandrakala Trivedi v. Dr. S.P. Trivedi , the Apex Court was of the view that marriage appears to be practically dead. The parties before the Apex Court were grand-parents and the parties adopted a very tough and rigid attitude. The Court shared the feeling of wife that a conservative Hindu lady would not prefer to be known as divorcee in the Society. While dismissing the appeal, the Court directed the husband to purchase a flat for the wife in Thane between Rs. 3 to Rs. 4 lakhs within six months and also to deposit a sum of Rs. 2 lakhs by a Demand Draft in the name of the wife with the Family Court, Bombay which was permitted to be withdrawn by her. The Apex Court also directed that if the wife is not agreeable for a one room flat at Thane, she shall intimate in writing within one month and on being so informed, the husband shall deposit a sum of Rs. 5 lakhs in the Family Court which was permitted to be withdrawn by the wife. The Apex Court suspended the decree of divorce for the aforesaid period with option to the wife to accept the flat plus Rs. 2 lakhs or Rs. 5 lakhs. Thus, in the peculiar facts of the said case, the Apex Court passed the Order, and therefore, does not lay down a law thereby. In the instant case, we are not called upon to decide the allegations made by the husband in the petition for divorce under Section 13 of the Act, but the only question before us is: Whether the wife can withdraw her consent and whether reasons for withdrawal are required to be given, to which we have answered earlier.

38. In the case of Romesh Chandra v. Smt. Savitri , the Court exercised power under Article 142 of the Constitution and held that the marriage of the parties before the Court stand dissolved subject to appellant transferring his house in the name of his wife. In that case, the Court found that marriage is dead both emotionally and practically. On behalf of the husband, it was submitted that in the facts and circumstances of the case and in the interest of justice, power must be exercised and the order passed by the learned single Judge must be confirmed. In our opinion, in the instant case, the proceedings before the trial Court indicates that the husband, under the guise of reconciliation and thereafter settlement, prolonged the litigation. He was aware that he has married again and he will not be in a position to keep the wife with him; yet, obtained adjournments and participated in reconciliation proceedings knowing well that reconciliation is not possible. It was the husband who moved the Court for divorce under Section 13B(2) of the Act. On behalf of the husband, it is stated that everything is given to the wife and nothing now remains to be given. If that is the situation, then what was remaining to be "settled" for which adjournments were taken. We find that it was an intentional act on the part of the husband of prolonging the proceedings beyond 18 months from the date of institution so that it could be argued, as is now being argued before us, that after lapse of 18 months, wife cannot withdraw the consent.

39. Powers under Article 142 of the Constitution of India are not conferred on the High Courts. Several judgments were read by learned Advocates including . Mr. Pandya submitted that the Court has passed a decree without following the procedure under Section 13B(2) and that this Court should exercise powers under Article 226 of the Constitution. In that case also, parties had jointly requested the Court to dissolve the marriage. In the facts and circumstances of the case, even if discretion is vested in this Court, this Court would not like to exercise the discretion looking to the conduct of the husband, i.e. (1) remarriage during the subsistence of the first marriage and during the pendency of the petition, (2) participating in reconciliation proceedings knowing full well that he cannot accept appellant as his wife any more as he has remarried, and (3) unnecessarily prolonging the matter.

40. Learned Advocate for the wife submitted that even otherwise also, learned single Judge could not have passed a decree of divorce in the instant case. He submitted that in a Civil Application filed by the husband in the First Appeal from which this L.P.A. arose, this Court (Coram: D.G. Karia, J.) by judgment and order dated 17th February 1995, held that the ratio laid down in the case of V. Bhagat v. D. Bhagat (supra) cannot be made applicable to the instant case and powers under Article 142 of the Constitution cannot be exercised. An attempt was made by the husband by making a request to the Court to dissolve the marriage, but learned single Judge (D.G. Karia, J.) rejected the application and the decision is carried to the Apex Court. It is, therefore, proper for this Court not to say anything in this respect.

41. We would just say that this Court has no power similar to Article 142 of the Constitution and even if similar powers are conferred, in the peculiar facts and circumstances of the instant case, it would not be proper on our part to exercise such powers, because it is not the wife who is claiming the divorce but it is the husband who is claiming a decree of divorce and looking to the conduct of the husband, who has acted in disregard of provisions of the Act, cannot get the benefit of his own wrong, and therefore, we would not like to exercise such powers, if any.

42. Learned Advocate for wife submitted that it is the right of a wife to refuse to stay with husband if he has remarried or is staying with another woman, and therefore, in a case like this, according to the learned Advocate for appellant even if she has withdrawn her consent on other ground, she is not to be blamed. If before submitting an application, wife acquired knowledge about second marriage and yet submitted an application under Section 13B one may argue that having knowledge of the second marriage she has consented but in the instant case, after filing a petition and before reconciliation proceedings, husband remarried with one Sonia in August 1985 and thereafter participated in reconciliation proceedings, suppressing the fact of second marriage and knowning full well that even if wife agreed to stay with him, she will not be able to stay, as he has already remarried. Thus, the husband has taken steps to delay the proceedings by participating in reconciliation proceedings and by asking for time for the said purpose. If later on wife came to know about the fact of second marriage of her husband, according to learned Advocate for wife, she is justified in taking the stand before learned single Judge that she did not want divorce by mutual consent and therefore, even though the law does not require the disclosure of the reasons for withdrawal of consent or that ground should be reasonable, in the facts and circumstances of the case, in our opinion, no interference by the learned single Judge appears to be justifiable.

43. Under Section 23(2) of the Act, the trial Court trying the matter is expected to make every endeavour to bring about reconciliation between the parties. Proceedings of reconciliation are meant to cease hostility or opposition or to cause a person to accept or be resigned to something not desired to harmonize or settle inconsistency etc. The legislature has specifically made provision for reconciliation with a view to see that the hostility between the two spouses is ceased or what is not acceptable by one spouse is made acceptable by persuasion. This is with a view to see that there is harmony between the spouses after settling the quarrel. Any efforts made in this direction need not be a part of the proceedings and the Court is merely acting as a conciliator or a mediator for a limited purpose of reconciliation. Learned Advocates for the parties submitted that there was no evidence worth indicating before the trial Court that the husband got remarried in August 1985. Learned Advocate for the appellant before us submitted that if the admission is to be used, the same must be used in its true spirit. If the husband remarried in August 1985, then for him, there was no purpose in participating in the reconciliation proceedings because he was aware that there is no possibility of reconciliation. As stated in the application under Section 13B, all the articles belonging to the wife have been returned to her and she had no right to claim maintenance and everything was settled. Therefore, there was no purpose in settlement talks. However, he participated in the reconciliation proceedings knowing full well that he has remarried and there was no scope of reconciliation. Mr. Pandya, learned Advocate for the husband submitted that before the learned Judge, if anything is stated in answer to a question put by the Court in the reconciliation proceedings, the same is not be used against him. If that be so, similarly what wife has stated cannot be used against her.

44. Learned Advocate for wife read out the relevant portion of para 66 of the impugned judgment which reads as "when she was cornered and confined by further question by the Court" and submitted that the wife was not being cross-examined on behalf of the husband and the learned Judge, in his submission, cross-examined the wife, which is not within the purview of Section 23(2) of the Act. In our opinion, Section 165 of the Evidence Act empowers the Judge to put questions.

The Judge, instead of being a mere spectator and recording machine, must become a participant by evincing intelligent and active interest by putting questions to witnesses in order to ascertain truth. Section 165 of the Evidence Act has invested wide powers in this regard. But the Judge must exercise his powers without unduly trespassing upon the functions of the Public Prosecutor or the Defence Counsel or for plaintiff or for defendant without any hint of partisanship and without appearing to frighten, coerce, confuse or intimidate the witness. Section 165 of the Evidence Act applies to a witness. This section would not apply to a reconciliation proceedings but to a trial. Chagla C. J., in Yusuf H. Abbas v. Bhagwandas P. Nagpal reported in 51 Bom. LR 523 has observed:

A Judge trying a case is not at liberty to take the witness in the case into his own hand, instead of leaving Counsel to discharge their functions for which they are briefed and paid.

It is well settled that this power cannot be exercised to fill up the lacuna in the matter. As said earlier, proceedings under Section 23(2) of the Act are meant for reconciliation and not for finding out the cause but if possible, to see that hostility is ceased or to see that harmony persists. Learned Advocate for the appellant-wife submitted that the Court, during the reconciliation proceedings, already decided to allow the appeal by passing a decree of dissolution of marriage from the date of the petition. He drew our attention to the following part of paragraph 66 of the impugned judgment:

When she was asked as to whether she was ready and willing to give consent if the amount is paid by the husband to the wife, she had some reservations and she replied to the Court that she would think about the problem. She, however, did try to know from the Court that in case she accepts the amount from the husband as per her demand, from what date the decree of divorce could be granted. She wanted to know as to whether it would be divorce from the date of the petition of it would be divorce from the date of the appeal is allowed. This Court very frankly suggested that it should be from the date of the petition because that would put an end to all other litigation about legality or otherwise of the second marriage and legitimacy or otherwise of the child born out of the second marriage. She, however, has some reservations of this question.

But we are inclined to take a permissible view by saying that it may be just an opinion expressed by the learned single Judge. We are of the opinion that this aspect of the matter should not detain us any more.

45. In our opinion, the discussion which took place in the chamber for reconciliation must be for a limited purpose, i.e., for an amicable settlement between the parties for bringing reconciliation, and if there is failure, matter is to be decided on merits without being influenced by what is stated by the parties in confidence. Learned Counsel for the appellant before us submitted that the Court has not to act as an investigator or a prosecutor or a Counsel cross-examining a witness.

46. The settled position appears to be that the talk for reconcilation that takes place in the chamber is not being used as a basis to come to any conclusion because whatever parties have stated is in strict confidence for the purpose of reconciliation and not as witnesses giving evidence.

47. One more aspect is the say of both the learned Advocates that the factum of second marriage was not placed before the trial Court. Learned Advocate for the wife stated that, had the wife known about the second marriage, she would have placed that fact before the trial Court immediately and would have taken action. We are not much concerned with this at this juncture because both the parties, through their Advocates, have requested the trial Court for reconciliation and settlement and husband participated in the reconcilitation proceedings knowing full well that he has re-married during the subsistence of the first marriage and was not in a position to accept the appellant-wife as his wife.

47.1. Learned Advocates appearing before us for the parties have stated that before the trial Court, there was no material indicating that the husband got married with another woman, i.e., Sonia and that he is father of a child. As a matter of fact, learned Advocate Mr. Pandya for the husband has not admitted the factum of a second marriage, and stated that there is no evidence whatsoever about the second marriage. It is clear from the record that before the trial Court, no material whatsoever was produced to indicate the second marriage of the husband having taken place and even there is no whisper about the same, but it appears that some cases and counter-cases were filed much after the filing of the appeal wherein allegations are made against the husband about the second marriage having taken place with one Sonia. Husband stated before the learned single Judge that he has remarried in August 1985 and he is a father of child. He might not have disclosed before the trial Court but has admitted that fact before the learned single Judge of this Court.

47.2. Learned Advocate Mr. Pandya for the respondent-husband has urged that during the process of conciliation, before the learned single Judge, the husband had never said or had agreed to a suggestion that he has entered into a second marriage with Sonia and that a son has been born out of the second wedlock. Mr. Pandya has further urged that the husband had only said or had agreed to a limited suggestion, i.e., that he lives with Sonia since August 1985 and that this association has resulted into a birth of a male child.

Even if we accept this say coming from the learned Advocate for the husband, what all we have stated regarding the conduct of the husband, would not require to undergo any change. On the contrary, it could be said that the husband had preferred to stay with a woman, during the period when the matter was pending before the trial Court for reconciliation under the same roof, and that this association has resulted in the birth of a male child.

48. Summing up, we must say that there is not a single case where the consent was withdrawn before the stage of inquiry and yet the Court passed a decree of divorce with effect from the date of the application; there is not a single case where either the husband or wife remarried during the subsistence of the first marriage and yet the Court has passed a decree of dissolution of the first marriage which would benefit a party who has committed a wrong. On the contrary, the Apex Court has refused to grant a decree on the ground of irretrievable breakdown of marriage as during the pendency of the appeal husband remarried. The paramount consideration should be that a party who comes to the Court with clean hands should be assisted. Power may be exercised in favour of the party who comes to the Court with clean hands. In the instant case, law, as made clear by the Apex Court, does not permit the dissolution of a marriage because the consent is withdrawn.

Learned trial Judge had no occasion to make inquiry as provided under the Act because consent was withdrawn. A Court, when sitting in appeal, has to consider whether the judgment delivered by the trial Court is in accordance with law or not. No doubt, in a given case, subsequent event may be considered and also the conduct of the parties may be taken into consideration. In the instant case, on the contrary, after the trial Court dismissed the petition, wild allegations are made against the wife, about which the learned single Judge has also observed in his judgment. Not only that, there is admission of the husband before the learned single Judge wherefrom it is clear that the husband can be said to have committed a wrong which could provide a cause to the wife for obtaining a decree of divorce under Section 13(1)(i-a) of the Act but that cannot constitute a ground for the husband to get a divorce from the wife.

49. In view of what is stated hereabove, the wife withdrew her consent even before the trial Court could make an inquiry. The trial Court was, therefore, right in dismissing the application submitted under Section 13B of the Act. There is no requirement in law that the party withdrawing consent must give reasons or the withdrawal must be based on some reasonable grounds. Irretrievable breakdown of marriage by itself is not a sufficient ground for dissolution of a marriage, as held by the Apex Court. In the result, we quash and set aside the order passed by learned single Judge granting decree of dissolution of marriage solemnized between the parties herein and the order passed by the trial Court is restored. We direct the Principal Judge, City Civil Court, Ahmedabad to forthwith assign H.M.P. No. 328 of 1994 filed by husband to a learned Judge of that Court, with a request to dispose of the petition within a period of two months from the receipt of the writ. The appeal stands allowed with cost, which is quantified at Rs. Five Thousand only.

Office is directed to forward the writ of this judgment to the trial Court forthwith.