

(2004) 11 P&H CK 0029

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 112-M of 2003

Gurpinder Kaur Sashi

APPELLANT

Vs

Ravinder Singh Sahsi

RESPONDENT

Date of Decision: Nov. 19, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Hindu Marriage Act, 1955 - Section 13, 13B, 13B(2)

Citation: (2005) 140 PLR 584

Hon'ble Judges: V.M. Jain, J; S.S. Saron, J

Bench: Division Bench

Advocate: J.S. Toor, for the Appellant; J.S. Brar, for the Respondent

Final Decision: Allowed

Judgement

V.M. Jain, J.

This appeal has been filed by the wife against the decree for divorce by mutual consent u/s 13B of the Hindu Marriage Act (hereinafter referred to as the Act), passed by the learned trial Court.

2. The facts relevant for the decision of the present appeal, are that on 1.10.2002, Gurpinder Kaur Sahsi (wife) and Ravinder Singh Sahsi (husband) filed a joint petition u/s 13B of the Act, seeking dissolution of marriage by a decree of divorce by mutual consent. On 1.10.2002, the petition was adjourned to 5.4.2003 for recording the statements of the parties. Meanwhile, a joint application was filed by the parties for taking up the file and to condone the period of 6 months and to decide the petition earlier. Thereupon the learned trial Court took up the main petition by preponing the date and after dispensing with the statutory requirement of the waiting period of 6 months, the learned trial Court, after recording the statements of the parties, accepted the petition and passed the decree for divorce by mutual consent u/s 13B of the Act, vide judgment and decree dated 24.10.2002. Aggrieved against the same

Gurpinder Kaur Sahsi (wife) filed the present appeal in this Court.

3. Notice of motion was ordered to be issued to the respondent. The record were also ordered to be summoned and the same were duly received and perused vide order dated 26.10.2004, while adjourning the case for arguments it was directed that the appeal shall be disposed of at the motion stage itself.

4. We have heard learned counsel for the parties and have gone through the record carefully.

5. Learned counsel for the appellant-wife submitted before us that the judgments and decree dated 24.10.2002, passed by the learned trial Court granting the decree for divorce by mutual consent u/s 13B of the Act without waiting for the statutory period of 6 months, were illegal and void and were liable to be set aside. Reliance in this regard has been placed on the law laid down by the Hon"ble Supreme Court in the case reported as [Smt. Sureshta Devi Vs. Om Prakash](#), . On the other hand, learned counsel for the respondent-husband submitted before us that the statutory period of 6 months, as required u/s 13B of the Act, could be curtailed if so prayed by the parties in their statements. Reliance has been placed on the law laid down by a Division Bench of this Court in the case reported as Smt. Krishna Kheterpal v. Satish Lal (1986) 90 P L R 608 and on the Single Bench judgment of this Court reported as Smt. Malwinder Kaur v. Devinder Pal Singh .

6. After hearing learned counsel for the parties and perusing the record, in our opinion, the present appeal must be allowed, the judgment and decree, passed by the trial Court, must be set aside and the petition for divorce by mutual consent, must be dismissed.

Section 13B of the Act reads as under:-

"13-B Divorce by mutual consent.- (1) Subject to the provisions of this Act, a petition for dissolution of marriage by a decree of divorce may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976(68 of 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 solemnised 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."

From a perusal of the above, in our opinion, it would be clear that both the parties are competent to file a joint petition for divorce by mutual consent, provided they were living separately for a period of one year. Furthermore, it is provided that on the motion made by both the parties not earlier than 6 months after the date of presentation of the said petition and not later than 18 months of the said date, the Court on being satisfied after hearing the parties and after making such an inquiry as it thinks fit, pass a decree of divorce dissolving the marriage by mutual consent. Thus, it would be clear that a decree for divorce by mutual consent u/s 13B of the Act could be granted on a motion made by both the parties not earlier than 6 months of the presentation of the petition seeking dissolution of marriage by a decree of divorce by mutual consent.

7. In present case, as referred to above, the petition u/s 13B of the Act (for the first time) was presented on 1.10.2002 and the final decree dissolving the marriage between the parties by a decree of divorce by mutual consent, was passed by the learned trial Court on 24.10.2002 i.e. just after 24 days of the filing of the petition for divorce by mutual consent. In our opinion, this decree, on the face of it, is contrary to the statutory provisions provided u/s 13B of the Act.

8. In [Smt. Sureshta Devi Vs. Om Prakash](#), after considering the provisions of Section 13B of the Act, it was held that Sub-section (1) of Section 13B of the Act required that the petition for divorce by mutual consent must be presented before the Court jointly between the parties and that there were 3 other requirements of Sub-section (1) namely (i) they have been living separately for a period of one year, (ii) they have not been able to live together, and (iii) they have mutually agreed that the marriage should be dissolved. It was further held by the Hon'ble Supreme Court that under Sub-section (2) Section 13B of the Act, the motion before the Court for hearing the petition should also be made by both the parties. It was further held that under Sub-section (2), the parties are required to make a joint petition "not earlier than 6 months after the date of presentation of the petition and not later than 18 months after the said date". It was further held in the said authority that the aforesaid 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 and under influence. After considering the question as to whether it is open to one of the parties at any time till the decree of divorce is passed, to withdraw the consent given to the petition, it was held by the Hon'ble Supreme Court that from the analysis of Section 13B of the Act, it will be apparent that the filing of the petition with mutual consent did not authorise the Court to make a decree for divorce and that there is a period of waiting from 6 to 18 months after the said date. It was further held that this interregnum was obviously intended to give time and opportunity to the parties to reflect on their move and to seek advice from relations and friends. It was further held that in this transitional period, one of the parties may have a second thought and change mind not to proceed with the petition and the spouse may not be a party to the joint motion

under Sub-section (2) of the Act and there is nothing in the Section which prevents such course. It was further held that at the time of the filing of the petition by mutual consent, the parties are not unaware that their petition does not by itself snap marital ties and that Sub-section (2) of Section 13B of the Act is clear on this point. It was further held that what is significant in this provision is that there should also be mutual consent when they move the Court with request to pass a decree of divorce. It was further held that 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 mutuality and consent for divorce. It was held that mutual consent to the divorce is a sine qua non for passing a decree for divorce u/s 13B of the Act and the mutual consent should continue till the divorce decree is passed.

9. In view of the law laid down by the Hon"ble Supreme Court in the above said authority and the statutory provisions of Section 13B of the Act, in our opinion, the trial Court was not empowered to curtail the statutory period of six months while granting the decree of divorce by mutual consent, on the statements of the parties. As held by the Hon"ble Supreme Court, the waiting period of 6 to 18 months was intended to give time and opportunity to the parties to reflect on their move and seek advice from their relations and friends and in this transitional period, one of the parties may have a second thought and change his mind not to proceed with the petition. In the present case, without waiting for the statutory period of six months, the learned trial Court proceeded to grant decree of divorce by mutual consent on the statements of the parties, by preponing the date, thereby curtailing the minimum statutory period of six months. As referred to above, the Court was not empowered to do so and as such, the decree for divorce by mutual consent was passed by the trial Court contrary to the mandatory provisions of Section 13B of the Act and the law laid down by the Hon"ble Supreme Court in the Smt. Sureshta Devi's case (supra).

10. The two authorities, relied upon by learned counsel for the respondent-husband, in our opinion, would have no application to the facts of the present case. In (1986) 90 P.L.R. 608 (supra), the husband had filed the petition for divorce u/s 13 of the Act On 26.7.1980 on various grounds. During the pendency of the petition on 29.5.1984, a compromise was arrived at between the parties and on the basis of the said compromise, a decree for divorce was granted by the learned trial Court, in favour of the husband. Aggrieved against the same, the wife filed appeal in this Court. The matter was referred to a larger Bench on the question regarding maintainability of the appeal against the consent decree and could the marriage be dissolved by a decree of divorce on the basis of compromise arrived at between the parties. A Division Bench of this Court, after considering various aspects of the case, held that the matrimonial Court could dissolve marriage by a decree of divorce on the basis of compromise arrived at between the parties, during the pendency of the divorce petition. In our opinion, the law laid down by the Division Bench in this authority would have no application to the facts of the present case. In any case, as referred

to above, the divorce petition was filed on 26.7.1980 and the compromise was arrived at between the parties on 29.5.1984 and in this manner, it would be clear that the matrimonial litigation between the parties was pending for almost 4 years at the time when the parties had arrived at a compromise and decree for divorce was granted in favour of the husband on the basis of the said compromise.

11. In (supra) (decided by one of us), the husband had filed a petition for the grant of divorce against the wife on the ground of cruelty. After hearing both the sides, the learned Additional District Judge granted the decree of divorce. Aggrieved against the same, the wife filed appeal in this Court. During the pendency of the appeal, the parties arrived at a compromise and an application under Order 6 Rule 17, C.P.C., was filed seeking amendment of the petition converting it into a petition for divorce by mutual consent. The said amendment was allowed and after recording the statements of the parties, the marriage between the parties was dissolved by a decree of divorce by mutual consent, by curtailing the period of six months and placing reliance on the law laid down by a Division Bench judgment of this Court in Smt. Krishna Kheterpal's case (supra). In our opinion, the law laid down in this authority would have no application to the facts of the present case. As referred to above, in the reported case, the husband had filed a petition for divorce on the ground of cruelty. The said petition was contested by the wife. The learned Additional District Judge granted the decree of divorce in favour of the husband vide decree dated 28.11.1996. Aggrieved against the same, the wife filed appeal in this Court. The appeal remained pending for almost 6 years and it was only on 13.11.2002 that the decree for divorce by mutual consent was granted on the application jointly filed by the parties seeking amendment of the divorce petition and converting it into a petition for divorce by mutual consent u/s 13B of the Act. In our opinion, under such circumstances, the Court was certainly competent to grant the decree of divorce by mutual consent u/s 13B of the Act, since the matrimonial litigation between the parties remained pending for more than 6 months. However, the law laid down in this authority would have no application to the facts of the present case. As referred to above, in the present case for the first time the divorce petition with mutual consent was jointly filed by the parties on 1.10.2002 and just on the 24th day thereof i.e. on 24.10.2002, the marriage between the parties was dissolved by a decree of divorce u/s 13B of the Act which was just contrary to the provisions of Section 13B of the Act and the law laid down by the Hon'ble Supreme Court in Smt. Surehta Devi's case (supra).

12. In view of the above, the present appeal deserves to be allowed and the judgment and decree passed by the trial Court, are liable to set aside.

13. In the normal course we would have sent the case back to the trial Court for deciding the petition u/s 13B of the Act afresh in accordance with law, since the said petition was decided by the trial Court without waiting for the statutory period of six months. However, in the present case, no useful purpose would be served in doing

so, on two grounds; firstly, 18 months" period has already expired since the petition was initially filed on 1.10.2002 and secondly, by tiling the present appeal, the appellant-wife has already indicated that she is not interested in seeking dissolution of marriage by a decree of divorce by mutual consent. Under these circumstances, no useful purpose would be served in sending that case back to the trial Court for deciding the aforesaid petition u/s 13B of the Act afresh.

14. In view of the above, the present appeal is allowed, the judgment and decree, passed by the trial Court, are set aside and the divorce petition u/s 13B of the Act, is dismissed with no order as to costs.