
(1993) 12 P&H CK 0111

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal from Order No. 123-M of 1992

Har Bhagwan

APPELLANT

Vs

Sushma

RESPONDENT

Date of Decision: Dec. 14, 1993

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Hindu Marriage Act, 1955 - Section 13B, 13B(2), 9

Citation: (1994) 1 DMC 576

Hon'ble Judges: G.C. Garg, J

Bench: Single Bench

Advocate: G.S. Bawa, for the Appellant; J.S. Thinde, for the Respondent

Judgement

G.C. Garg, J.

Dismissed of a petition u/s 9 of the Hindu Marriage Act (for short "the Act") has given rise to this appeal.

2. During the course of hearing of Civil Misc. No. 10277/C II of 1993, learned Counsel for the parties presented before me a joint petition purporting to be one u/s 13B of the Act, duly signed by the parties, for the grant of a decree of divorce by mutual consent. Along with the petition u/s 13B, another application was filed wherein it was prayed that statutory period of six months as required by Section 13B(2) of the Act be condoned having regard to the facts and circumstances of the case especially the one that petition u/s 9 of the Act remained pending for about one year. Statements of the appellant as also the respondent who are present in Court have been recorded separately wherein it stated that they have filed a petition for divorce by mutual consent of their own free will and the same is not the result of collusion. They have further stated that they have been living separately from each other for the last about 21/2 years and they have never lived together during this period and they have mutually agreed that their marriage be dissolved by a decree of divorce by mutual consent.

3. On consideration of the matter and having regard to the fact that the parties have been living separately for the last about 21/2 years, I am satisfied that the parties have decided to dissolve the marriage by a decree of divorce and there is no chance of their reconciliation and it is not possible for them to live together as husband and wife. In the circumstances, it is considered appropriate to waive of statutory period of six months as contemplated by Section 13B(2) of the Act. The parties have also settled out of Court all matters concerning marriage including return of dowry, articles and lump sum payment of amount on account of permanent alimony. The wife has also withdrawn here application u/s 125 of the Code of Criminal Procedure, filed against the husband claiming maintenance. No useful purpose would be served by keeping the petition for mutual divorce pending for a period of six months and the interest of justice requires that marriage between the parties be dissolved by a decree of divorce by mutual consent by waiving the period of six months. Thus, having regard to the totality of the facts and circumstances of this case, petition u/s 13B is allowed and the marriage between the parties is dissolved by a decree of divorce. Petition filed by the husband u/s 9 of the Act as also this appeal have been rendered infructuous and are consequently dismissed as such.

In view of the grant of a decree of divorce by mutual consent, Civil Misc. applications Nos. 9569/C,II. 6837/C,II, 6838/C,II and 10277/C,II of 1983 have been rendered infructuous and are dismissed as such. The office shall assign number to the petition u/s 13B of the Act seeking divorce by mutual consent as also the one seeking waiver of statutory period of six months.

This net result is that petition u/s 13B of the Act filed by the parties is accepted and marriage between them is dissolved by a decree of divorce by mutual consent by waiving the statutory period of six months. The wife will have no further claim against the husband. No costs,