

(2007) 04 JH CK 0023

Jharkhand High Court

Case No: F.A. No. 39 of 2007

Smt. Sadhna Gupta and Sri
Kanhai Lal Gupta

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: April 25, 2007

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13(1), 13B

Citation: AIR 2007 Jhar 96 : (2007) 2 BLJR 1830 : (2008) 1 DMC 154 : (2007) 3 JCR 38

Hon'ble Judges: M.Y. Eqbal, J; Dilip kumar sinha, J

Bench: Division Bench

Advocate: K.P. Choudhary, for the Appellant; M.S. Akhtar, SC II, for the Respondent

Final Decision: Allowed

Judgement

1. Heard.

This appeal is directed against the judgment and order dated 6.3.2007 passed by Principal Judge, Family Court, Jamshedpur in Matrimonial Suit No. 104/2006 whereby he has rejected the application filed by both the appellants u/s 13B of the Hindu Marriage Act, 1955 for dissolution of marriage by mutual consent of both the husband and the wife.

2. The marriage between the parties was solemnized on 23.1.1988 at Sidgora, Jamshedpur. They lived together as husband and wife for a few months and, thereafter, they started living separately due to dispute and differences between them. Their case is that no child was born from their wedlock and despite efforts made for amicable settlement, the same failed and ultimately they decided to dissolve their marital relationship by mutual consent. For that they filed a petition u/s 13B of the Hindu Marriage Act, 1955 which has been rejected by the court below by passing the impugned order on the ground, inter alia, that there was unnecessary delay in filing the application u/s 13B of the Act. The operative portion

of the impugned order reads as under:

Besides that, I find that there has been unnecessary delay in presenting this petition. According to Clause (d) of Sub-section 1 of the Act, there must not be unnecessary delay in instituting the proceeding. No explanation has, at all, been offered either in the petition or in the evidence that why there has been delay in eighteen years because according to the averments made in the petition as well as in the evidences of both the parties, they are living separately for the last eighteen years. On this ground also, both the parties are not entitled to get a decree of divorce by dissolving their marriage with mutual consent. Thus, I find that evidences of both the parties that they cannot live together and they have consented mutually to dissolve their marriage, is of no importance because their averments made in the petition is not true and they have withhold the real fact. In fact they intend to seek divorce on the ground of impotency. But such relief cannot be granted u/s 13B of the Act. Thus point Nos. V & VI are decided in affirmative.

9. Having considered the entire discussion made above, both the parties are not entitled to get the decree of divorce by dissolving their marriage, with mutual consent. Thus, I find no merit in this petition.

3. From perusal of the aforesaid order, it appears that the Court below has not correctly appreciated the law as to how the applications in matrimonial case are to be disposed of. It is rather surprising to see that the Court below has held that since the parties are living separately for- the last 18 years, they are not entitled to get a decree of divorce.

4. In our view, since the parties are living separately for the last 18 years and all efforts of settlement have failed, it would be just and proper to dissolve the marriage by passing a decree of divorce. We find that the Court below has not considered the matter in right perspective. The application for dissolution of marriage by mutual consent is, therefore, has to be allowed.

5. In the aforesaid premises, this appeal is allowed and the impugned order is set aside. The matter is remitted back to the Family Court, Jamshedpur to dispose of the application filed u/s 13B of the Hindu Marriage Act in accordance with law within a period of two weeks from the date of receipt of a copy of this order. The Court below is directed to strictly comply this order within the time fixed by this Court.