

(1977) 09 MP CK 0002

Madhya Pradesh High Court

Case No: First Appeal No. 160 of 1977

Ravishanker

APPELLANT

Vs

Smt. Sharda Vishwakarma

RESPONDENT

Date of Decision: Sept. 21, 1977

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13B

Citation: AIR 1978 MP 44 : (1978) JLJ 35 : (1978) JLJ 198

Hon'ble Judges: K.K. Dube, J; J.S. Verma, J

Bench: Division Bench

Advocate: S.C. Dutt, for the Appellant;

Final Decision: Allowed

Judgement

J.S. Verma, J.

This appeal is against the Judgment dated 5th July, 1977, passed by the Fourth Additional District Judge, Jabalpur, in Civil Suit No. 82-A of 1976. By that Judgment, the trial Court dismissed a joint application made by a married couple for grant of a divorce by mutual consent u/s 13B of the Hindu Marriage Act which has been inserted by the Marriage Laws (Amendment) Act, 1976 (No 68 of 1976). The trial Court has held that a divorce by mutual consent in accordance with the newly added Section 13B alone cannot be granted and it is necessary to prove the existence also of some other ground to enable grant of divorce. This has led to the present appeal also filed jointly by the couple.

2. There is no controversy about the facts.

3. The facts pleaded and also (adequately proved by evidence adduced in the trial Court are these: The parties were married at Jabalpur on 19th June, 1975. They lived together only for 22 days thereafter and have, since then, been unable to live together. The joint petition for divorce by mutual consent in accordance with the newly added Section 13B was filed on 23-11-1976. It was alleged therein that the

parties lived together for only 22 days after their marriage at Jabalpur on 19th June, 1975; that they had been living separately since then for a period of more than one year upto the date of petition, that there was no chance of their reconciliation and living together at any time in future and that they had mutually agreed that their marriage should be dissolved in the best interest of both the parties and their families. Thereafter, evidence, was recorded in the trial Court on 2-7-1977. The husband and the wife both examined themselves in the Court and proved these very facts reiterating their desire to obtain the divorce by mutual consent.

4. As earlier stated, the trial Court dismissed the petition taking the view that the proof of the ingredient contained in the newly added Section 13B alone is not sufficient for grant of divorce. The only question is whether this conclusion is correct.

5. Section 13B of the Hindu Marriage Act, which was inserted by the Marriage Laws (Amendment) Act, 1976 (No. 68 of 1976), in May, 1976, 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, 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 18 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.

A plain construction of the section shows that there is no ambiguity therein and it was inserted for the purpose of providing a new ground for divorce by mutual consent, as was existing in Section 28 of the Special Marriage Act, 1954. Sub-section (1) requires the petition to be based on the ground that both the parties to a marriage 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. These are the only requirements of a petition filed under the provision claiming divorce by mutual consent. Sub-section (2) then provides for the requirements to be fulfilled at the trial. There has to be a joint motion by both the parties made not earlier than 6 months after the date of the presentation of the petition and not later than 18 months after that date. The

motion being made by the parties in this manner, the Court is required to be satisfied, after hearing the parties and making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true. On satisfaction of the Court about these matters, the Court is required to pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree. These are all the requirements laid down in Section 13B. There is nothing to indicate that the parties seeking divorce by mutual consent are required to prove anything in addition to that laid down in Section 13B. The view that a ground which existed earlier, in addition to that contained in Section 13B, should also be proved for obtaining the relief of divorce by mutual consent available u/s 13B, would result in nullifying the very object of providing this new ground of divorce by insertion of Section 13B. This provision is similar to Section 28 in the Special Marriage Act, 1954. It is obvious that on proof of another ground which already existed, a decree for divorce could be obtained without recourse to Section 13B. For this reason, adding any further requirement to that provided in Section 13B is not even a reasonable and practical construction of the provision apart from being contrary to its clear meaning. The view taken by the learned Additional District Judge completely frustrates the object with which Section 13B was inserted in the Hindu Marriage Act. The view taken by the trial Court on this point has, therefore, to be reversed.

6. It is obvious that all the requirements of Section 13B have been fulfilled in the present case. Even the trial Court did not doubt this position. Both the parties to the marriage continue to agree that their marriage should be dissolved as prayed for by them jointly. Even the present appeal is filed jointly by both of them. We, therefore, do not find any reason to deny them the relief they claim. Even after lapse of this further time, that decision to have their marriage dissolved continues unchanged and they have continued to live separately all this time. No useful purpose would be served by letting the marriage bond between them continue any longer. In the fitness of things, their marriage should be dissolved.

7. Accordingly, we allow this appeal and pass a decree of divorce declaring the marriage between the parties to be dissolved with effect from the date of the decree. Decree be drawn up accordingly.