

**Rashmi Sharma and Another Vs. Nil**

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**SooperKanoon Citation :** [sooperkanoon.com/1173311](http://sooperkanoon.com/1173311)

**Court :** Karnataka

**Decided On :** Nov-27-2014

**Judge :** N.K. Patil & the Honourable Mrs. Justice Rathnakala

**Appeal No. :** Misc. First Appeal No. 6837 of 2014 (FC)

**Appellant :** Rashmi Sharma and Another

**Respondent :** Nil

**Judgement :**

(Prayer: This Misc. First Appeal Is Filed Under Section 19(1) Of The Family Court Act, Against The Judgment and Decree Dated:13.10.2014 Passed In M.C.No.1626/2014 On The File Of The 5 Additional Principal Judge, Family Court, Bangalore, Dismissing The Petition U/Sec 13b Of The Hindu Marriage Act.)

1. The appellants have preferred this appeal aggrieved by the order of rejection of their petition filed under Section 13B of the Hindu Marriage Act, 1955, passed in M.C.No. 1626/2014 dated 13.10.2014 by the V Addl. Prl. Judge, Family Court, Bangalore.

2. As per the facts displayed, the appellants being Hindus are married as per Arya Samaj rites and customs at Bangalore on 27.11.2005. Due to differences that arose between them, they led separate lives for last eight years, though they are living under the same roof. They decided to seek mutual divorce of their marriage and filed a petition under Section 13B of the Hindu Marriage Act (hereinafter

referred to as 'the Act' for short) on 11.4.2014 before the Family Court, Bangalore. After the waiting period of six months, they appeared before the court on J 3.10.2014, but the learned Judge dismissed their petition by observing that there is no cause of action. They have no children from the marriage. They have no claims against each other.

3. Sri.Suresii Lokre, learned Counsel appearing for the appellants submits that the trial court without ascertaining the facts from the appellants, dismissed the petition in a stroke. It is the case of the petitioners that, even on the day of filing the petition under Section J 3B of the Act, they were residing under same roof. But the trial court could not have drawn inference that residing under same roof is leading marital life together. The impugned order passed without giving opportunity to the appellants has resulted in great agony and hardship for the appellants since their marriage is broken long back and they want to separate peacefully from each other.

4. Perused the certified copy of the order sheet of the lower court dated 15.4.2014 and 13.10.2014, which read thus:

"15.4.2014:

I.A.I is allowed. Call illegible) by

13.10.2014.

13.10.2014:

Petitioners 1 and 2 and their counsel present.

Heard both petitioners. They submitted that they were living together upto April 2014. Hence petition filed on 11.04.2014 is pre- matured one. Hence petition is dismissed."

5. It appears that the learned Trial Judge even before recording their sworn statement inferred that, they were living together upto April 2014 and has dismissed the petition on the supposition that the petition is pre-mature. We are unable to subscribe to the opinion formed by the learned Trial Judge, which

perhaps was taken within a splash. If the learned Judge had gone through the petition averments, she could have noticed that there is categorical averment by the parties that due to differences, they are residing separately for the past more than eight years though they are living under one roof.

6. It is relevant to extract the provisions of Section 13B of the Act, which read thus:

"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".

7. While sub-section (1) of Section 13B of the Act contemplates the circumstances under which the estranged spouses can get their marriage dissolved by mutual consent and mode of presentation of the petition, sub-section (2) of Section 13B contemplates the conduct of proceeding by the concerned court.

8. When the case came up for consideration before the court, it was incumbent on the part of the court to make enquiry in accordance with the procedure established by law to know truthfulness or otherwise of the petition averments. The procedure as enumerated in Section 10 of the Family Courts Act, 1984, reads thus:

"10. Procedure generally.- (1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Noticing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other."

9. While the procedural aspect is governed by Civil or Criminal Procedure Code depending on the nature of the lis before it, the receipt of evidence is in accordance with the inbuilt mechanism i.e., Sections 14 to 16 of Family Courts Act, 1984, which read as under:

" 14. Application of Indian Evidence Act, 1872. - A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872(1 of 1872).

15. Record of oral evidence. - In suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judge, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the witness and the Judge and shall form part of the record.

16. Evidence of formal character on affidavit. - (1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court.

(2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit".

That makes it clear that though strict rules of Evidence Act is not applicable before the Family Court, basics of Evidence Act is not excluded. According to interpretation clause of Section 3 of the Evidence Act, "Evidence" means and includes-

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters to fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court;

such documents are called documentary evidence."

In the case on hand, the application is rejected without receiving any sort of evidentiary material.

10. If the court was not satisfied about the genuineness of the prayer made by the parties, it was very well within its scope to reject the petition on the basis of evidentiary material before it by assigning its reason for holding so. Contrarily, the Trial Judge has passed a non-speaking order, which speaks of non- application of mind. Hence, the same is liable to be set aside.

Accordingly, the appeal is allowed.

The order passed in M.C.No. 1626/2014 dated 13.10.2014 by the V Addl. Prl, Judge, Family Court, Bangalore, is hereby set aside,

The matter is remanded to the trial court with a direction to dispose of the petition filed by the parties under Section 13B of the Act in accordance with law, within a time frame of four weeks from the date of receipt of copy of this judgment.

The parties are directed to appear before the V Addi. Prl. Judge, Family Court, Bangalore, on 8.12.2014 at 11.00 a.m.

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