

Hanamappa Chetrappa Koppal Vs. Nil

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Court : Karnataka

Decided On : Oct-23-1990

Reported in : ILR1991KAR602; 1991(1)KarLJ316

Judge : Kedambady Jagannatha Shetty, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13B(1) and 13B(2)

Appeal No. : C.R.P. No. 3594 of 1990

Appellant : Hanamappa Chetrappa Koppal

Respondent : Nil

Advocate for Pet/Ap. : F.S. Dabali, Adv.

Disposition : Civil revision petition allowed

Judgement :

ORDER

K. Jagannatha Shetty, J.

1. This Civil Revision Petition is filed by the petitioners against the order passed in M.C. No. 23 of 1989 dated 18-6-1990 by the Civil Judge, Gadag, praying therein to set aside the impugned order and to grant a decree of divorce declaring the marriage to be dissolved under Sub-section (2) of Section 13B of the [Hindu](#)

[Marriage Act, 1955](#) ('Act' for short).

2. Briefly stated facts are that the petitioners were married according to Hindu rites on 18-12-1988 at Hole Alur in Ron taluk. After the marriage, they lived together for a period of one week in the first petitioner's house. But the second petitioner did not allow the 1st petitioner her husband to have any matrimonial connection with her. They started living separately from, each other after about three weeks of their marriage. They have not been able to live together and the marriage between them was completely broken and there was no possibility of reconciliation and, therefore, they filed a petition under Section 13B(1) of the Act, for a decree of divorce by mutual consent on 25-10-1989.

3. In the petition it is stated that after the marriage the petitioners lived together hardly for one week and there was no matrimonial connection. The 2nd petitioner thereafter left the 1st petitioner and went to her parents house. Ever since then both the petitioners are living separately. It is averred in the Petition that they have lost interest in each other and their relationship was strained. It is also averred that it is impossible for them to continue as husband and wife. It appears that there was some attempt by the elders of the family of both parties to bring about conciliation between them. But they were not agreeable to live together.

4. That on 1-6-1990 and 12-6-1990 the Court recorded the statements of the petitioners, wherein both the petitioners have reiterated the position stated in the joint application and further requested to grant a decree of divorce to dissolve the marriage as having been living separately for more than a period of one year, that they have not been able to live together and therefore they have mutually agreed that the marriage to be dissolved.

5. The learned Civil Judge, after considering the statements of the parties recorded in the open Court, passed the impugned order that no Judgment could be passed before the expiry of 18 months from the date of presentation of the joint application for a decree of divorce by mutual consent under Section 13(B)(1) of the Act. In the order the learned Civil Judge, has observed that both the petitioners have examined themselves on 1-6-1990 and 12-6-1990 and they clearly stated in their evidence that both have psychological differences of opinion and physically

they are incapable of enjoying the married life and if the marriage is continued, the lives of both the petitioners will be subjected to untold difficulties and harassment.

6. The operative portion of the order of the learned Civil Judge, reads as follows:

'No doubt, Section 13(B)(1) of the Act provides for passing of a decree of divorce by mutual consent of the husband and wife; but passing of such decree prior to 18 months of the presentation of the petition would be against the intention of the Legislature since the Act has given a period of 18 months from the date of presentation of petition giving an opportunity to both parties to withdrawn the petition and therefore only the Court must hold an enquiry and dissolve the marriage between the petitioners and not earlier to it. Therefore, I am not pronouncing the Judgment in this case, as 18 months period contemplated under Section 13(B)(2) of the Hindu Marriage Act, has not yet reached. Therefore, the Judgment has to be pronounced in this case only after 25-4-1991.

Hence, the case is posted after 25-4-1991. It comes in summer vacation. So fix date on reopening day i.e., May 1991.'

7. Petitioners being aggrieved by the order of the learned Civil Judge, have filed this revision petition on the ground that the Court has misconstrued the provision of Section 13(B)(2) of the Act.

8. The learned Counsel for the petitioners argued that Section 13(B)(2) of the Act, is part of mere procedure. It must be interpreted to advance further interest of justice. He has further submitted that the said Section does not impose any fetters on the power of Court to grant decree of divorce, if it is, evidenced that it is impossible for the parties to live together, a decree of divorce by mutual consent could be granted in the interest of both of them.

9. In support of his contention he relied on the decisions of (1) Delhi High Court reported in DHANJIT VADRA v. SMT. BEENA VADRA, : AIR1990 Delhi146 ; (2) JARNALI KAUR v. BANT SINGH, 1987(1) Hindu L.R. 75 (Punjab & Haryana); and (3) SANTHOSH KUMARI v. VIRENDRA KUMAR, .

10. The vexed question which required to be answered is whether the Court should wait for completion of the period of eighteen months from the date of joint application in the Court for decree of divorce by mutual consent as required under the provisions of Section 13(B)(2) of the Act;

11. The trial Court records were summoned. The Court perused the records. The statements have been recorded and the petitioners have reiterated that they are living separately for more than one year and they have separated and not living together separately and they have no intention to live together as they have mutually agreed that the marriage should be dissolved.

12. Section 13B was inserted by an- amendment in 1976. It reads as follows:

'13-B. Divorce by mutual consent:-

(1) Subject to the provisions of this Act, petition for dissolution of marriage by a decree of divorce may be presented to the District Court by both the parties to marriage together, where 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,'

13. In the above cited Decision the Delhi High Court has held that it is clear that the requirement of a motion within the time specified under Sub-section (2) of Section 13-B is merely a matter of formality and a decree for divorce by mutual consent can be granted without waiting for the period of six months specified

under Sub-section (2) of Section 13-B, if the Court is satisfied that in case the requirement of Sub-section (1) of Section 13-B is fulfilled.

14. In the case of Jarnali Kaur v. Bant Singh an application originally filed by the wife was 'converted' into an application for decree of divorce by mutual consent, statements of parties were recorded and on the same day a decree was passed dissolving the marriage of the parties without keeping the matter pending for a period of six months. The High Court of Punjab and Haryana has held that it was being so done 'as more than the prescribed period has already been spent by the parties for re-thinking on the question of sustaining the marriage or dissolving it.' The Court has further observed that 'it would be futile to prolong their agony by allowing another six months period to pass before a decree for divorce is granted'.

15. The decision of the Rajasthan High Court reported in Santhosh Kumari v. Virendra Kumar is to the effect that it need not attach much importance to the form of application or the time within which it has been made. In that case an appeal arose out of a decree granted by the trial Court under Section 13-B of the Act, on the basis of the joint application made by the parties for grant of a decree by mutual consent. The decree was challenged on the ground that the Court could not have acted upon it because the motion under Sub-section (2) of Section 13-B could have been made not earlier than six months after the filing of the joint application filed as well as the motion under Sub-section (2) of Section 13 of the Act had been made by a single application, Lodha, J., rejected this challenge and upheld the decree passed by the District Judge. It was held thus:

'When the parties requested the Court to treat the pending petition as one for grant of a decree of divorce by mutual consent 'they must be deemed to have asked for amendment of that application and when the Court acted upon it, it must be deemed to have allowed the amendment.' Since it was abundantly clear that the parties did not want to live together and were desirous of getting a decree of divorce, it was held: 'In these circumstances the insistence on the form of application would be improper and unnecessary because if the decree is refused on such a ground the agony between the parties will continue.' It was further observed apart from the interpretation of Section 13B(2) 'that when it appears to

the satisfaction of the Court that it is impossible for the parties to live together and a decree for divorce by mutual consent would be in the interest of both of them, it need not attach undue importance to the form of application or the time within which it has been made.'

16. Thus on a proper analysis of Section 13-B the intendment of the Legislature is clear that six months as well as eighteen months time fixed by Section 13B(2) is not a Rule relating to jurisdiction of the Court to entertain petition for divorce by consent. The question of jurisdiction to entertain the petition is dealt with by Sub-section (1), which must be strictly complied with. Sub-section (2) of Section 13-B is a part of a procedure and it is well laid down law that procedural provision must be construed as handmaid of Justice in order to advance further the interest of Justice.

17. Section 13-B(2) does not impose fetters on the powers of the Court in granting divorce if the Court is satisfied that, such a divorce by consent could be granted. When it appears to the satisfaction of the Court that it is impossible for the parties to live together for any reason and they have been living separately for more than one year and the decree of divorce would be in the interest of both of them, it need not attach much importance of waiting for the expiry of the period of six months or eighteen months, the Court could grant a decree of divorce by mutual consent instantly if motion is made by the parties.

18. In the instant case the joint application is made by the petitioners and they have averred that they have been living separately for more than one year and they have not been able to live together and they have therefore mutually agreed that the marriage to be dissolved. Both have given statement before the Court and reiterated the same and further they have stated that both psychologically differ from each other and physically they are incapable of enjoying the married life. Both the petitioners are educated, financially and socially independent and they are well aware of the consequences of break up of marriage and determined to get the marriage dissolved by mutual consent.

19. It is submitted by the learned Counsel for the petitioners that decree of divorce be granted immediately, for any delay would cause greater hardship to live in

broken house and they should be put to untold harassment and difficulties. The learned Civil Judge, on the basis of the statement made before him, as well as the averments contained in the joint application of the parties was of the view that though the decree of divorce for dissolution of marriage could be granted, but he cannot do so, in view of the provisions contained in the Section that no decree could be passed before the expiration of eighteen months from the date of presentation of the petition.

20. The trial Court by improperly construing the provisions has abdicated its power to exercise sound judicial discretion and failed to pass a decree for divorce instantly, when it is established that the petitioners are living separately for more than one year and they are not living together and they have mutually agreed that the marriage should be dissolved. In these circumstances, I am fully satisfied that the parties have been separated within three weeks of the marriage due to psychological differences and due to physical incapacity to enjoy married life, they have been living separately for more than a year and they have not been able to live together and, they have mutually agreed that the marriage should be dissolved. I am also satisfied that there is no collusion between the parties.

21. The learned Counsel for the petitioners has further made a motion in this Court that the decree of divorce to be granted instantly. I am of the opinion that the settlement between the parties is the prudent course of action and it is for the mutual benefit of the petitioner an order of decree for divorce is to be passed.

22. In that view of the matter, I make the following:

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