

In Re: Ujwal Shetty and anr.

In Re: Ujwal Shetty and anr.

SooperKanoon Citation : sooperkanoon.com/386919

Court : Karnataka

Decided On : Jul-10-2002

Reported in : II(2002)DMC556; 2003(3)KarLJ20

Judge : M.F. Saldanha and ;N.K. Patil, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13B and 14; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 47, Rule 1; [Family Courts Act, 1984](#) - Sections 19(1)

Appeal No. : Miscellaneous First Appeal No. 219 of 2002

Appellant : In Re: Ujwal Shetty and anr.

Advocate for Pet/Ap. : M.J. Alva, Adv.

Disposition : Appeal allowed

Judgement :

1. A rather unfortunate situation has arisen in this case where, a young couple both of whom are professionals presented a petition under Section 13-B of the Hindu Marriage Act, to the Family Court praying for dissolution of their marriage which had been solemnised on 9-5-2001. Under Section 13-B there is a bar to the presentation of the petition, unless one year has expired since the date of the marriage. Section 14 however prescribes that if it is a case of exceptional hardship or, on the other hand, if it is a situation of grave depravity etc., that the parties may apply to the Court for waiver of this condition in which case, the petition can be

presented earlier.

2. The petition under Section 13-B was presented before the Family Court on 27-9-2001 which is hardly four months after the marriage was solemnised. An application was filed under Section 14 of the Act, setting out certain very valid reasons why the Court should be pleased to allow the parties to present the petition prematurely i.e., before the period of one year has elapsed. The record indicates that the learned Judge presiding over the Family Court considered the application and granted the leave to present the petition. In our considered view, once the Court has granted the leave that position assumes finality and there was really no need for the learned Judge presiding over the Family Court at a later stage to address himself once again to the aspect of prematurely at any stage thereafter. Out of abundant caution however we have taken the precaution of examining the application filed under Section 14. We have ascertained from the learned Advocate who represents the joint petitioners as also from the parents of the couple who are present in Court and we are satisfied that the reasons that were presented to the Trial Court for entertaining the petition earlier were valid and that the Court very rightly granted the sanction to present the petition prematurely.

3. After the parties appeared before the Trial Court at the stage of passing orders, the learned Judge has re-examined the position and he has dismissed the petition on the solitary ground that it was presented prior to the period of one year having elapsed. We are surprised at the approach that was adopted because, as pointed out by us earlier, the Family Court had considered the application under Section 14 and had passed the necessary order according its sanction to present the petition prematurely and it was not open to the learned Judge who was presiding over that very Court at the time when the petition was to be disposed of, to virtually question or sit in appeal or review the earlier order that had been passed by his predecessor who was presiding over the same Court.

4. Though the parties are not present before us, the record indicates that the requisite procedures have been complied with before the Trial Court and but for the aforesaid reason the Trial Court would have granted a decree of dissolution of marriage under Section 13-B. Since some time has passed we have re-

ascertained from the parents of the respective parties who inform us that the couple are still desirous of dissolution of the marriage and secondly, that there are no claims of any type subsisting on either side.

5. Having regard to this position, the order dated 15-12-2001 passed by the Family Court is set aside. The petition under Section 13-B of the Act is allowed. Marriage solemnised between the appellants on 9--5-2001 shall be dissolved through a decree under Section 13-B of the Hindu Marriage Act.

6. Office to draw up the decree accordingly.

7. The appeal succeeds and stands disposed of. No orders as to cost.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com