

M. Sailaja and Another

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Court : Andhra Pradesh

Decided On : Mar-23-1995

Reported in : AIR1995AP325; 1995(2)ALT166

Judge : P. Venkata Rama Reddi, J.

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

Appeal No. : Civil Revn. Petn. No. 838 of 1995

Appellant : M. Sailaja and Another

Advocate for Pet/Ap. : D. Parthasarathy, Adv.

Judgement :

ORDER

1. The petitioners are the wife and husband. They filed O.P. No. 154 of 1994 in the City Civil Court, Hyderabad, on 22-11-1994 to pass a decree dissolving the marriage on the basis of mutual consent with the allegation that they have been, living separately for a period of more than two years and that there is no possibility of their reunion.

2. In view of the time limit set out in subsection (2) of Section 13B of the [Hindu Marriage Act, 1955](#), hereinafter referred to as 'the Act', the learned III-Addl. Judge, City Civil Court, Hyderabad, fixed the date of appearance of the parties to 5-6-1995, i.e., after the expiry of six months. An application was filed to dispense with

the observance of statutory period of six months for disposing of the original petition. As the said application was rejected by the learned III-Addl. Judge, City Civil Court, Hyderabad, the present revision petition is filed.

3. Sub-section (2) of Section 13B of the Act reads as follows:

13B. (1) xx xx xx xx xx

(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petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being 'satisfied, after hearing the parties had after making such inquiry as it thinks fit, that a marriage has been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.'

4. The learned counsel for the petitioners relying upon the decision of a Division Bench of this Court in K. Omprakash v. K. Nalini, : AIR 1986 AP167 has strenuously contended that the provision as to time limit embodied in sub-section (2) of Section 13B of the Act is only directory and that in any case, it has no application to the exercise of jurisdiction by the appellate Court. In other words, he submits, that the appellate court can relax the time limit and forthwith grant a decree of divorce on the basis of the application filed by both the parties. It is difficult to countenance this argument in view of the later Division Bench decision of this Court in Jakkula Ventaka Ramana Murthy 1992 (3) Andh LT 381 (DB), which has been fairly brought to my notice by the learned counsel for the petitioners. That was a case in which a petition for decree of divorce by mutual consent was filed under Section 13B(2) of the Act on 20-7-1992 and it was posted to 20-1-1993 by the trial court. An application was filed to advance the O.P. to 22-7-1992. The lower court refused to waive the statutory requirement of minimum period of six months for passing a decree for divorce. Against that order, an appeal was filed. It was contended by the learned counsel for the petitioners that the statutory time limit incorporated in Section 13B(2) of the Act does not inhibit the appellate court to grant a decree, if the appellate court is otherwise satisfied that the marriage should be dissolved. Reliance was placed on the earlier Division

Bench judgment in K. Omprakash v. K. Nalini : AIR 1986 AP167 . Thus, it may be noted that the facts of the case and arguments advanced therein are almost similar to those in the present revision. The Division Bench consisting of M. N. Rao and Reddeppa Reddy, JJ., explained the ratio in Om Parkash case, as follows:

'xxxxx

The ratio of the above case is that when an appeal is preferred to this Court by either of the spouses and at the appellate stage if they seek a decree for divorce by mutual consent, this court need not adhere to the statutory time limit enacted in Section 13B(2). That not being the fact situation in the instant case, we cannot agree with the submission of the learned counsel for the appellants.

The Division Bench then held:

The trial court has no power to alter the statutory time limit enacted in Section 13B(2) of the [Hindu Marriage Act, 1955](#). It is well settled that when a Statute ordains a particular procedure prescribing a certain time limit, the Court is bound to comply with the same; by resorting to an intefpretative process, the object of the statute cannot be defeated. The reason for prescribing the time-limit in sub-section (2) of Section 13B is to enable the parties to have introspection before finally opting for snapping the marital tie.'

5. The Division Bench judgment squarely governs the instant case and in view of the legal position declared by the Division Bench, I do not think that when the High Court is seized of an appeal filed against the interlocutory order declining to dispense with the minimum statutory period of six months, the High Court as an appellate court, can grant divorce decree even before the expiry of six months from the date of presentation of petition for divorce. It may be noticed that in K. Omprakash's case, : AIR 1986 AP167 the request for dissolution of marriage on the basis of mutual consent came to be before the High Court a number of years after the petition for divorce was presented and by that time, there was sufficient time for introspection. This is yet another reason why the decision in Omprakash case cannot be followed in this case in preference to J.V. Ramana Murthy's case 1992 (3) Andh LT 381 (DB) (supra).

6. The learned counsel for the petitioners has Submitted that the observations of the earlier Division Bench are clear to the effect that the time limit prescribed under sub-section(2) of Section 13B of the Act is not mandatory, but it is only directory. No doubt, this principle laid down by the Division Bench has not been adverted to by the learned judges constituting the later Division Bench. But, no point will be served in referring the matter to a Division Bench or Full Bench for reconsideration on this ground inasmuch as it would be practically impossible to get a final pronouncement in the matter before the court is closed for Summer Vacation. If such reference is made, the very purpose of this appeal will be defeated.

7. That apart, even if the provision is construed to be directory, it does not mean that the requirement of time limit should be dispensed with in all cases and the petition for divorce on the basis of mutual consent should be disposed of the moment the petition is filed. Advisedly, for the reason stated by the Division Bench in J.V. Ramana Murthy's case, 1992 (3) Andh LT 381 (DB) (supra), the Legislature has prescribed a minimum period of six months for taking up a petition for divorce on a mutual consent. Even if such requirement is directory, it does not follow that the High Court should ignore the time limit the moment a request is made by both the parties.

8. In the instant case, the affidavit filed in support of the interlocutory application does not disclose any special reasons apart from what is stated in the original petition itself as to why the parties cannot wait even for six months or had irreparable prejudice will be caused if the time lag of six months is allowed to pass by. In this view of the matter also, I do not think that the order under revision warrants any interference. The civil revision petition is, therefore, dismissed. No costs. However, I would like to observe that the O.P. shall be positively taken up by the trial Court on 5-6-1995 and orders be passed before the end of June, 1995.

9. Revision dismissed.