

Padmini Vs. Hemant Singh

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Court : Madhya Pradesh

Decided On : Oct-26-1993

Reported in : II(1994)DMC548

Judge : A.R. Tiwari, J.

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

Appeal No. : F.A. No. 9 of 1991

Appellant : Padmini

Respondent : Hemant Singh

Advocate for Def. : Harbhajanka, Adv.

Advocate for Pet/Ap. : Shudha Waghmare, Adv.

Disposition : Appeal allowed

Judgement :

A.R. Tiwari, J.

1. Initially the correctness of the decree of divorce passed by IT? Additional Judge to the Court of District Judge, Ujjain in H.M. Case No. 54-A of 89 on 27th Nov., 1990 on the ground of cruelty in terms of Section 13 of the Act was under challenge in this appeal presented under Section 28 of the [Hindu Marriage Act,](#)

[1955](#) (for short, 'the Act') joint prayer for decree of divorce on mutual consent in terms of Section 13B of the Act has, however, materially altered the complexion of the controversy.

2. Facts are jajune, Parties were married on 22-11-81 according to vedic rites at Mandasur. The appellant came to the matrimonial home on 23-11-81 and stayed there till 13-12-81, On 14-12-81 she returned to parental home. During the sojourn between 23-11-81 and 13-12-81, the appellant denied consummation on the marriage and resisted cohabitation on the pretext that she suffered from the ailment of bleeding and was unfit for sexual intercourse. The respondent was in service at Vidisha. It was also pleaded that the appellant desired to marry someone else and invariably delivered threat to commit suicide on protest. She wrote letters marked as Exh. P/3 to P/6 disclosing her desire to snap the relationship. The appellant denied the allegation emphatically. She pleaded that she was cajoled to pen letters under the influence of liquor which she was compelled to consume. She claimed that her husband indicated disapproval of the marriage and exhibited repulsion. She was categorised as a 'mad' girl. It was asserted that she was never cruel and on the other hand, she was treated with cruelty on account of unsatisfied demand of dowry. It was also stated that the husband had contracted marriage with another woman and had voluntary sexual intercourse with her. She also denied allegations of plan of marriage and threat about suicide.

3. On evaluation of evidential material in juxtaposition of surrounding circumstances the learned trial Judge through elaborate judgment running into 84 paras, concluded that the husband was entitled to obtain decree of divorce on the ground of cruelty. The defence-plea of another marriage was negatived.

4. The appellant, dissatisfied by the verdict, has presented this appeal.

5. The endeavour to bring about reconciliation turned acarpous. But on the date of hearing (21st Oct. 1993) the parties attended the Court in person with their respective Counsel and the appellant presented an application (IA No. 5882/93) praying for dislodgement of decree on cruelty and instead for granting decree of divorce by mutual consent in terms of Section 13B of the Act. The respondent

husband promptly consented. Parties also agreed to delink questions of permanent alimony and maintenance as permissible under Section 25 and disposal of property as permissible under Section 27 of the Act and leave the same for being agitated in other appropriate proceedings. These facts were recorded in the proceedings which are signed by the parties as proof of mutual consent for divorce and delinkage.

6. I have heard Smt. Shubda Waghmare learned Counsel for the appellant and Shri Harbhajanka learned Counsel for the respondent as also the parties.

7. In 1985, the respondent was of 31 years of age and the appellant in 1986 was of 23 years of age. This meant that by now one is of 39 years and the other is of 30 years. Qualification wise, the appellant is M.A. whereas the respondent is M.Sc., M.Phil, Ph.D. yet age and aptitude could do nothing to bring about union.

8. It is noticed that the marriage is irretrievably broken. The husband petitioned on 5-5-1982. The matter continued to hibernate for about 11 years. And even this long gap did not inspire the parties to own a mood to accept each other and to learn to live on the principle of 'forgive and forget'.

9. At times, course of life becomes destined to play a very cruel role. It gives torture, not rapture; tears, not cheers; problems not pleasure; frustration; not fineness. Was Montaigne right when he observed in classic terms that 'A good marriage would be between a blind wife and a deaf husband ?'

10. The parties eventually saw sense and opted to end the marriage which existed legally but failed factually. They thus decided to come under the protective umbrella of Section 13B of the Act and aptly took the decision to bid adieu to marriage tie but without stigmatizing each other. Such an effort is palatable and proof of human power to seek suitable solution of vexed problem.

11. About the utility of newly introduced Section 13B of the Act by means of the Marriage Law (Amendment) Act, 1976, Shri S.V. Gupta in his Hindu Law 3rd (1981) edition, Vol. 12 page 800, offered fitting comment in the following words :

'This is a very radical amendment as it enables divorce by consent. It also virtually puts a death nail on the old concept of Hindu Law and Hindu Morality that marriage is a sacrament and not a contract.'

12. Here is a case where parties had been living apart for long under different roofs and did find their reservoir of emotions or sentiments empty for each other. The wedlock has virtually become a deadlock. Chances of reunion have faded away. The parties had lived separately for many years; they had not been able to live together; they have mutually and voluntarily agreed that the marriage should be dissolved. Thus all the conditions, as envisaged under Section 13B of the Act were present. Marriage tie thus merited to be enappd.

13. Still the question was whether it was necessary to postpone the care for six months in terms of Section 13B of the Act The intention of legislature is to provide a minimum period of six months for 'rethinking' in the matter of ansasthetization of conjugal rights permanently. Sometime, time heald while at times kills. The parties, emollient and educated, thought umpteen times, but heard the sound only of monosyllabic 'no' cosigning the prospect of reconciliation to nihilism. The possibility of another inkling was totally non-existent.

14. The divorce was granted on 'Cruelty'. Now the parties what divorce, not on cruelty, but on consent. It would indeed be cruel to keep the matter in abeyance for the statutory period, as codified under Section 13B of the Act and leave the parties to remain lugged that longer.

15. In my view, Section 13B though seemingly mandatory can, in the present case, be construed as directory to soften its rigour in tune with the avowed purpose behind it.

16. Even on merits, it is seen that the respondent claimed divorce. The appellant too in her letter, Exh. P/4, declared as under :

Main Swechha se Talak Chahti hun.

This letter is of 6-2-82, penned and undisputed by the appellant. The same desire is reiterated in the aforesaid application. The oppugnation was with regard to the

manner and mode and not about the eventual dissolution by decree of divorce.

17. The parties showed anxiety to terminate the torture and perish the pang without further procrastination. In this pursuit, they desired 'today' and despised 'tomorrow', perhaps on the same line as Martial assumed in Epigrams.

'Tomorrow will I live, the fool does say, Today itself too late, the wise lived yesterday'.

18. By amendment, the law has set its face against unwilling perpetuation of the matrimonial status between to unwilling persons. After all timetable as embodied in Section 13B is a procedural matter which is handmaid of justice. On one hand I am satisfied that ingredients of mutual consent are fully satisfied in this case and on the other hand, I am disposed to hold that timetable fixed by Section 13B does not apply to Appellate Court and imposes no fetters as such. In view of the acceptance of prayer based no consent. I found it unnecessary to scrutinise the worth of evidence led by the parties and correctness of the conclusion recorded on it.

19. Ex-consequenti, I vacate the Trial Court's decree together with all adverse findings recorded against the appellant and free her of the stigma. Instead, I pass the decree on mutual consent declaring the marriage between the parties to be dissolved with effect from the date of this judgment i.e. 26-10-1993.

20. Accordingly, this appeal is accepted along with the application for relief under Section 13B of the Act. The Trial Court's decree is thus demolished and fresh one in terms of mutual consent is ordered to be drawn. In peculiar facts, parties are left to bear their own costs as incurred. Counsel fee, on each side, shall be Rs. 1000/- if certified.

21. In conformity with this judgment, let a Decree, declaring dissolution of marriage, solemnised between the parties on 22/11/81, effective from 26-10-93 on mutual consent in terms of Section 13B of the Act, be framed.

22. The matters of alimony, maintenance and property are, as agreed and desired, left open to be agitated in appropriate proceedings if the parties so elected.

23. However, I desire to part with this case with apt observation. Anon had once posed the question that 'Is life worth living ?' And had himself answered it elegantly to say 'that depends on the liver'. Now that marriage tie is snapped, the parties would have ample time to wish that newly-born amicableness may prove to be precursor of new leaf in life. On the linch-pin of legal not litigable, consent, lambrequin on the lis is thus, inally drawn. Parties, jugged in the litigation for about 11 years and enmeshed in embroglic even prior to that, had sought divorce and to this extent it can be stated that 'all is well, that ends well'.

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