

Nayankumar Vs. Smt. Karuna

Nayankumar Vs. Smt. Karuna

SooperKanoon Citation : sooperkanoon.com/504164

Court : Madhya Pradesh

Decided On : Jul-12-1999

Reported in : II(1999)DMC769

Judge : S.B. Sakrikar, J.

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

Appeal No. : First Appeal No. 406 of 1997

Appellant : Nayankumar

Respondent : Smt. Karuna

Advocate for Def. : Wankhede, Adv.

Advocate for Pet/Ap. : S.A. Mev, Adv.

Disposition : Appeal allowed

Judgement :

S.B. Sakrikar, J.

1. Unsuccessful appellant/petitioner has directed this appeal against the judgment dated 23rd September, 1997 rendered by IX ADJ, Indore in Hindu Marriage Case No. 50/96, thereby dismissing the petition filed by the appellant/petitioner for grant of decree of divorce against the respondent on the grounds mentioned under

Section 13B of the [Hindu Marriage Act, 1955](#) (for short 'the Act').

2. The facts not in dispute are that the parties are Hindus and they are husband and wife. Their marriage was solemnized on 15.6.1994 at Indore under the Hindu Customs and Religions. The appellant and respondent after their marriage lived together at Indore as husband and wife but due to some differences, parties are living separately since 15th December, 1994. The appellant has filed petition before the Trial Court for grant of decree under Section 13B of the Act on the grounds of cruelty and adultery. The petition was contested on behalf of the respondent. Learned ADJ, on evaluating the evidence adduced by the parties, dismissed the petition filed by the appellant. Aggrieved, the appellant has filed this appeal under Section 28 of the Act.

3. During pendency of this appeal in this Court, both the parties on 2.12.1998 filed I.A. No. 6229/98 under Section 13B of the Act and prayed for passing a decree of divorce by mutual consent. The application was directed to be listed for consideration after the expiry of six months' period as required under Section 13B of the Act. After expiry of the said period parties have filed IA No. 3010/99 on 1.7.1999, application in continuation of the previous application under Section 13B of the Act. Both the aforesaid applications have been considered together and the statements of the parties are also recorded.

4. Both the parties in their statements have categorically stated that due to differences between them they have separated after their marriage and living separately since last 4-5 years. During this period they have no marital relations between them. Parties have stated that due to differences existing between the parties since last 4-5 years, reconciliation is not possible. As such by mutual consent they have decided to dissolve marriage by a decree of divorce on the ground of mutual consent.

5. On perusal, it emerged that the original petition for divorce was filed by the appellant before the Trial Court in the year 1996. I.A. No. 6229/ 98 under Section 13B of the Act was filed before this Court during pendency of the appeal on 2.12.1998 and subsequent application under the same Provision, I.A. No. 3010/99 was again filed on 1.7.1999. The period of more than six months has gone after

filing of the first petition seeking a decree of divorce by a mutual consent under Section 13B of the Act. After passing of the said period, from the statements of the parties recorded in this Court, I am satisfied that due to differences arose between the parties, reconciliation is not possible and in view of the facts and circumstances of the case on hand, it is in the interests of the parties to allow the petition filed under Section 13B of the Act and dissolve the marriage by a decree of divorce on mutual consent.

6. Consequently, this appeal and I.A. Nos. 6229/98 and 3010/99 are allowed and the marriage between the parties stands dissolved by a decree of divorce on mutual consent under Section 13B of the Act. There shall be no orders as to costs. Decree be drawn up accordingly.

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