

Harcharan Kaur Vs. Nachhattar Singh

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Court : Punjab and Haryana

Decided On : May-22-1987

Reported in : AIR1988P& H27

Judge : D.S. Tewatia and; M.R. Agnihotri, JJ.

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

Appeal No. : F.A.F.O. No. 20-M of 1986

Appellant : Harcharan Kaur

Respondent : Nachhattar Singh

Judgement :

Agnihotri, J.

1. This first appeal has been held by Smt. Harcharan Kaur wife of Nachhattar Singh against the decree of divorce granted in favour of husband Nachhattar Singh under sub-section (2) of S. 13B of the [Hindu Marriage Act, 1955](#), by the learned Additional Senior Subordinate Judge, Jagraon, on 17th December, 1985.

2. Briefly stated, on 26th June, 1970, Nachhattar Singh son of Chanan Singh, resident of village Sudhar, Tehsil Jagraon, District Ludhiana, married Smt. Harcharan Kaur daughter of Nahar Singh, of village Raowal, Tehsil Jagraon; District Ludhiana, by solemnizing the marriage by performing Anand Karj

ceremony in village Raowal. The parties lived together for about thirteen years as husband and wife and out of the wedlock two children were born--son Hardeep Singh aged about 12 1/2 years and daughter Mandeep Kaur aged about 4 1/2 years.

3. In December, 1982, relations between the husband and wife got strained and they started living separately with effect from January, 1983. Having lived separately for about one and a half years, they agreed to have their marriage dissolved by mutual consent, as a result whereof a petition under S. 13B of the [Hindu Marriage Act, 1955](#) (hereinafter referred to as the Act), for dissolution of marriage by a decree of divorce was presented by husband Nachhattar Singh and wife Harcharan Kaur together. The petition filed on 23rd July, 1984, came up before the Court for recording the statements of the parties on 24th July, 1984. After recording the statements of both the parties on the said date, the petition was adjourned to 28th January, 1985, to comply with the statutory requirement laid down in sub-section (2) of S. 13B of the Act, that is, the marriage can be dissolved not earlier than six months after the date of presentation of the petition.

4. However, on 28th January, 1985, Smt Harcharan Kaur, the present appellant, failed to appear in the Court and was, summoned again for 6th February, 1985. On the adjourned date of hearing, that is, on 6th February, 1985, the wife, Harcharan Kaur, made a statement in the Court that she did not want to divorce her husband and the petition for divorce submitted on 23rd July, 1984, be dismissed. Accordingly, acting upon the statement of Harcharan Kaur, the Court dismissed the petition on 6th February, 1985, obviously on the ground that one of the parties was not willing to dissolve the marriage by mutual consent.

5. Aggrieved by this order, Nachhattar Singh approached the High Court by filing F.A.O. No. 100-M of 1985. That appeal was allowed by the learned single Judge of this Court on 9th September, 1985, vide his judgment reported as Nachhattar Singh v. Harcharan Kaur; AIR 1986 Punj & Har 2D1, whereby the order of the learned Additional Senior Subordinate Judge was set aside and the case was sent back for making inquiry as envisaged by sub-section (2) of S. 13B of the Act, and to decide thereafter the petition for divorce by mutual consent in accordance with

law. The relevant portion of the judgment of the learned single Judge is reproduced below:--

'The impugned order suffers from legal infirmity and is, therefore, unsustainable. Sub-section (2) of S. 13B of the Act is in the following terms:

(2) On the motion of both the parties made not earlier than six months after the date of 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.' A reading of this sub-section would show that the scheme of S. 13B of the Act does not envisage withdrawal of consent by one party. The petition can be dismissed as withdrawn only if both the parties who had filed the petition together agree to withdraw the same. Six months after the date of the presentation of the petition and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties, the Court has to satisfy itself, after hearing the parties and after making such inquiries as it thinks fit, that the petition was in fact presented by both the parties to the marriage, that they have been living separately for a period of one year or more and that they have mutually agreed that the marriage should be dissolved. If both the parties had voluntarily consented to file the petition for dissolving the marriage by mutual consent and all the other conditions mentioned in sub-section (1) of S. 13B of the Act are fulfilled, it will not be open to a party to withdraw the consent. In the present case, without making an inquiry under sub-section (2) the trial court had dismissed the petition as withdrawn which could not be done merely on the asking of one party.'

6. In pursuance of the aforesaid order, the trial Court held the necessary inquiry and felt satisfied that the petition, in fact, was presented by both the parties as they had mutually agreed for dissolution of their marriage and that all the conditions mentioned in sub-section (2) of S. 13B of the Act were fulfilled in the present case. Consequently, the decree of divorce under sub-section (2) of S. 13B

ibid was passed by the learned Additional Senior Subordinate Judge declaring the marriage between the parties to be dissolved with effect from the 17th December, 1985, that is the date of the decree.

7. Aggrieved against the above decree of divorce granted in favour of The husband, Nachhattar Singh, respondent, Smt. Harcharan Kaur has come up in appeal to this Court. At the time of admission of the appeal. it was brought to the notice of the Motion Bench that there were conflicting single Bench judgments regarding the question as to whether the parties had to give their consent both at the initial stage and also et the time when the matter was taken up finally for decision on the petition under S. 13B of the Act. In view of this, the appeal was admitted to Division Bench. In these circumstances, it has come up for hearing before us.

8. Before deciding the appeal on merits, endeavors were made for bringing about reconciliation between the parties for which they were summoned to be personally present in the court, but the parties refused to reconcile as they were keen on contesting i6e litigation.

9. Mt. I. S. Vimal, learned counsel for the appellant wife, has vehemently argued to contend that the view taken by the learned single Judge in the earlier appeal on 9th September, 1985, deserved to be reconsidered as the same did not lay down the law correctly. According to the learned counsel, a petition under S. 13B could be withdrawn by either of the parties unilaterally and for that withdrawal a joint application or request by the husband and wife together was nether contemplated by the statute nor was possible in the nature of litigation. In support of his proposition; the learned Counsel has placed reliance on the following decisions in which this view has, of course, been taken by the learned judges of various High Courts: Guldip Singh Johar v. Kulwant Kaur, (1985) 1 Hindu LR 503(Punj & Har), and Santosh Kumari v. Virendra Kumar, (1986) 1 Hindu LR 620: (AIR 1986 Raj 128).

10. On the other hand, Mr. G. S. Punia, learned counsel appearing on behalf of the respondent husband Nachhattar Singh, has placed firm reliance on the earlier judgment of the learned single judge, between the parties: (AIR 1986 Punj and Har

201). In support of the same, reference was made by Mr. Punia to the judgment reported as Nitin Ramnaik Lal Jhaveri v. Padmini Nitin Jhaveri, (1985) 1 Hindu LR 668(Bom), which in turn has placed reliance on an earlier judgment of the same High Court in Jayashree Ramesh v. Ramesh Bhikaji, 1984 Mah LR 308: (AIR 1984 Bom 302: (1985) 1 Hindu LR 69). To the same view is the judgment of the Madhya Pradesh High Court reported as Meena Dutta v. Anirudh Dutta, (1985) 1 Hindu LR 280. In all these cases, the learned Judges have taken the view that once parties to the marriage had consented to prefer a petition for the dissolution of marriage by mutual consent, the said consent could not be withdrawn by either of the parties unilaterally.

11. With respect, we do not agree with the view taken by the learned single Judge in this very case earlier (AIR 1986 Punj and Har 201), while sending the case back to the trial Court for inquiry, as also with the judgments of the Bombay and Madhya Pradesh High Courts referred to above. In our view, unless the parties to the petition under S. 13B of the Act, who have mutually consented to have the marriage dissolved, continued to signify their mutual consent for the dissolution of the marriage right up to the date of the decree, the marriage cannot be dissolved under sub-sec (2) of S. 13B of the Act merely on the basis that six months earlier the parties had together presented the petition for dissolution of marriage by mutual consent. Either of the parties to the petition under S. 13B, that is, husband or wife, is at liberty to revoke its consent any time before the petition is finally disposed of; and if the other party is still keen to have the marriage dissolved, the other provisions of the Hindu Marriage Act are still available for the grant of necessary relief if a case is made out for the same. The object of S. 13B is to provide an additional speedy remedy to the husband and wife to have the marriage dissolved if even after sufficient efflux of time both of them find, that it is not possible for them to continue as husband and wife any further.

Obviously; if both the parties agree, the decree of divorce can be granted by mutual consent under S. 13B and If one of them fails to agree and does not want to oblige the other party by extending the requisite consent to the divorce, decree of divorce cannot be passed under S. 13B of the Act. For that, other provisions of the Act would have to be resorted to.

12. In this regard, it would be helpful to refer to para 645 of Halsbury's Laws of England Fourth Edition, Volume 13, at page 323, under the heading 'Consent: revocability', relevant part of which runs as under:--

'.....The consent must continue to decree nisi and must be valid subsisting consent when the case is heard, remaining operative as the expression of the respondent's state of mind up to the moment when the decree is granted: *Beales v. Beales*, (1972) 2 All ER 667, at page 674.....'

13. Therefore, expressing our agreement with the judgments in *Gurdip Singh Johar's case* (1985) 1 Hindu LR 203(Punj and Har)(supra) and *Santosh Kumari's case* (1986) Hindu LR 620(Punj & Har)(supra), we hold that the view taken by the learned single Judge earlier in this case (AIR 1986 Punj and Har 201) does not lay down the correct law, and is hereby overruled.

14. However, the fact remains that the aforesaid judgment of the learned single Judge which was inter partes was not challenged by way of appeal etc. either before the latter's Patent Bench or before the Supreme Court, and as a result thereof the same became final and binding upon the parties. It would be wholly immaterial that the view taken by the learned single Judge ceased to hold the field and has been overruled. Even though it has ceased to be a good law, nevertheless it would be binding on the parties to the case especially when it was a remand order and in pursuance whereof the Court below has held the necessary inquiry and passed the decree keeping in view the direction issued by the learned single Judge. For this proposition, the learned counsel for the respondent husband has placed reliance on the following judgments: *Satyadhyan Ghosal v. Smt. Deorajin Debi*, AIR 1960 SC 941; *Mt. Anarajia v. Tengari Kaber*, AIR 1962 Pat 65; *Prabhu Halwai v. Fulchand Khandelwal*, AIR 1969 Pat 16; and *Sita Ram Goel v. Sukhnandi Dayal*, AIR 1972 SC 1612.

15. Consequently, we have no hesitation to hold that the earlier decision of the learned single Judge in this very case in F.A.O. No. 100-M of 1985: (AIR 1986 Punj and Har 201) precludes the appellant from reagitating the point covered by that decision and is binding on the appellant. The learned trial Court has rightly granted the decree of divorce in favour of the respondent husband and the

marriage between the parties rightly declared dissolved with effect from the date of the decree, that is, 17th December, 1985.

16. In the result, we dismiss the appeal. In the circumstances of the case, there is no order as to costs.

D.S. Tewatia, J.

17. I agree.

18. Appeal dismissed.

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