

Kiran Vs. Sharad Dutt

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Court : Supreme Court of India

Decided On : Dec-10-1999

Reported in : II(2000)DMC503SC; JT2000(1)SC532; (2000)10SCC243

Judge : S.B. Majmudar and; V.N. Khare, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13B; [Constitution of India](#) - Article 142;

Appeal No. : Civil Appeal No. 7149 of 1999 (Arising out of SLP (C) No. 1503 of 1998)

Appellant : Kiran

Respondent : Sharad Dutt

Judgement :

ORDER

S.B. Majmudar, J.

1. Leave granted.
2. We have heard learned Counsel for the parties finally in this appeal.
3. During the pendency of the proceedings at SLP stage there was a development by which the parties agreed to get divorce by mutual consent. The matter was therefore, adjourned. We are happy to note that the consent terms came to be

filed on these lines duly signed by the appellant-wife as well as respondent-husband and also by their Advocates-on-record. We have gone through I.A. No.3 of 1999 which has been jointly moved by both the parties for getting a decree of divorce by mutual consent. In our view, the terms suggested are quite fair. We find that both the parties are living separately since years and they are not in position to see eye to eye and live together. They are not blessed with any child. Therefore, the prayer in original Hindu Marriage Petition No.584 of 1988 which was for divorce on the ground of alleged desertion and cruelty by wife and also under Section 11 of the Hindu Marriage Act wherein the respondent-husband sought a decree for nullity on the ground that there was no custom of marriage between the first cousins would no longer survive. The prayer in I.A. No.3 of 1999 for permitting the parties to amend the Hindu Marriage Petition is allowed in terms of para 3 of the I.A. We grant amendment to the divorce petition by treating it to be one under Section 13B of the [Hindu Marriage Act, 1955](#). The proceedings between the husband and wife for dissolution of marriage are pending since 11 years. On the fact of the case, there is no necessity to further delay the passing of the decree for divorce by mutual consent. We therefore, in exercise of our power under Article 142 of the [Constitution of India](#) accept the consent terms filed by the parties and direct that a decree for divorce by mutual consent under Section 13B of the [Hindu Marriage Act, 1955](#) be passed in this case. The agreement regarding payment of permanent alimony and monthly maintenance as laid down in paragraph 2(a) to (d) shall form part of the decree for dissolution of marriage by mutual consent. The judgments and decrees of the High Court and trial court are set aside. The Hindu Marriage Petition will stand allowed in terms of prayer for divorce by mutual consent. The appeal is disposed of accordingly. No costs.