

N.S. Padmanabhan Vs. Padmini

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Court : Delhi

Decided On : Mar-12-1996

Reported in : 62(1996)DLT533; (1996)113PLR70

Judge : J.K. Mehra, J.

Acts : Hindu Marriage Act, 1956 - Sections 13B

Appeal No. : Civil Miscellaneous (Main) Appeal Nos. 77, 392 and 593 of 1994

Appellant : N.S. Padmanabhan

Respondent : Padmini

Advocate for Pet/Ap. : Shyamla Pappu,; Pramod K. Shanna,; Krishnamurthi and;

Judgement :

J.K. Mehra, J.

(1) This is a peculiar case where both husband and wife have been litigating with each other after the relations between them became strained. Both the parties have been litigating for a considerable length of time, levelling allegations against each other of ill treatment etc. The respondent had moved to Pondicherry to stay with her parents, which resulted in the petitioner filing proceedings in the Hon'ble Supreme Court seeking a writ of Habeus Corpus. That matter was concluded upon the respondent appearing before the Supreme Court and slating that she i s

staying with her parents of her own free will and that she shall not rejoin her husband. Those proceedings were concluded. The parties reached some kind of settlement. Even that settlement had failed to work. The matter was pending in the matrimonial Court where by the Trial Court had ordered the parties to lead evidence relating to the plea of desertion primarily because even if the affidavit of the respondent filed before the Supreme Court is considered, two years period of desertion on the date of passing of the impugned order has not yet expired. The petitioner filed proceedings before this Court challenging the impugned order praying that in the light of the prayer, statements of the respondent wife categorically stating that she does not wish to return to matrimonial home, the Court should have allowed the petition for divorce and passed a decree of divorce on the ground of desertion.

(2) Notices were issued. During the pendency of the petition, parties reached an amicable settlement and filed a petition before this Court, being Exhibit CI. The petitioner paid the air fare for the respondent and her mother to enable them to appear before the Court to make statements in support of the said compromise petition. In their statements in support of the said application, both the parties have prayed that the proceedings pending be converted into a petition under section 13B and divorce for mutual consent be awarded and the time likely to be taken for the second motion should be waived in the said circumstances of the present case since there is absolutely no doubt that the marriage has already broken down irretrievably. The Trial Court record, which is already here before this Court, was also examined. I have seen the Trial Court record also and from the material available, it is sufficiently clear that it will not be possible for the parties to live together. I had an occasion to examine even the demeanour of the parties and from their manner also, it appeared quite clear that the marriage between them is as good as dead. Sending the proceedings back together with the compromise petition, to my mind, would be a futile exercise leading to further prolongation of the litigation and continued agony of the parties. From the address of both the Counsel also, it became quite clear that the marriage between the parties is lying dead and over. In these circumstances, and keeping in view the litigation in different Courts, which has been going on between the parties over the last about six years, it will be a fit case for cutting across any procedural objections to resolve

the matter between the parties in terms of their mutual agreement instead of directing them to go before the Court below. I think that it will be appropriate to withdraw the Hindu Marriage Case No. 557 of 1992 pending before Ms. Veena Birbal, Additional District Judge, Delhi to the file of this Court and convert the original petition into one under section 13B. I am supported in taking this view by the decisions, rendered in the cases : (i)Pratibha Prabhakar Matljrekar v. Prabhakar Damodar Manjrpkar, reported as All India Hindu Law Reporter -Volume li 1985 (1) Bom HC 361, (ii) Smt.Chandrakanta v. Rajesh, reported as All India Hindu Law Reporter -Volume li 1985 (1) Raj H C 426 (iii) V. Bhagat v. Mrs. D. Bhagat, reported as : AIR 1994 SC710 , (iv) Mumn Devi v. Kanwal Singh, reported as 1990 (1) Clj Punjab & Haryana High Court 572, (v) Sandhya Rani v. Kalyanram Narayanan, reported as , (vi) Pramila v. Rameshwal, reported as 1995 (6) Sca 400 and (vii) Preeti Singh v. Sandeep Singh, reported as : [1995]3SCR743 .

(3) The statements of the parties have been recorded. The respondent states that she has gone through the petition registered as C.M. 593/94 and understood the contents thereof. She further states that the same is correct and was prepared under the instructions of both the petitioner and the respondent and that the contents thereof are correct and it is signed by her and the petitioner on each page. The said petition at the end is signed by the respondent at point 'A' and is Exhibit-01. It is supported by her affidavit which is Exhibit-C2. She also identifies the signatures of the petitioner N.S. Padmanabhan at point 'B' of Exhibit-C1 and on each page thereof. She acknowledges that their marriage has irretrievably broken down and prays that this petition be treated as one for divorce by mutual consent under Section 13B(2) of the Hindu Marriage Act and also prays that the original petition Hma No. 587/92 currently pending in the Court of Mrs. Veena Birbal, AD), Delhi be converted into petition for divorce by mutual consent under Section 13B(2). She further states that since they have been in litigation for about six years and have not co-habited with each other since 16.4.1990, the period for second motion contemplated under Section 13B be waived and the marriage be dissolved by a decree of divorce by mutual consent. She has also undertaken to withdraw all other proceedings inter-se between the parties forthwith and prayed that this case be disposed of in terms of the prayers contained in Exhibit-C1. The petitioner's statement was also recorded. He acknowledged the statement of the respondent

Mrs. Padmini Padmanabhan recorded in the Court in his presence as correct. He confirms that Exhibit-CI bears his signatures on each page and also at the end at point 'B'. He states that the application is supported by his affidavit which is Exhibit-03. He also acknowledges that their marriage has irretrievably broken down and prays that this petition be treated as one for divorce by mutual consent under Section 13B(2) of the Hindu Marriage Act. He states that they have not co-habited since 16th April 1990. He also prays that the original petition Hma No. 587/92 currently pending in the Court of Mrs. Veena Birbal, ADJ, Delhi be converted into petition for divorce by mutual consent under Section 13B(2). He also states that since they have been in litigation for over six years and have not co-habited with each other, the requirement of and period for second motion be waived and the marriage be dissolved by a decree of divorce by mutual consent. He states that he gives up all claims to the custody of their children Km. Vijaya Lakshmi and Saranya and the children shall be with the respondent for all times. He states that he is agreed to withdraw all other proceedings inter-se between the parties forthwith and prayed that this case be disposed of in terms of the prayers contained in Exhibit-C1.

(4) In the light of the above discussion and the statements of the parties, I consider it in the interest of justice to allow the petition, being Exhibit Clause Ordered accordingly. I accordingly withdraw the Hindu Marriage Case No. 557 of 1992 pending before Ms. Veena Birbal, Additional District Judge, Delhi to the file of this Court and convert the original petition into one under Section 13B in terms of the joint prayer of the parties and I further consider it to be in the interest of justice to waive the requirement of second motion and the waiting period, as contemplated under section 13B because in my opinion, the parties who have already litigated for nearly six years and have not been able to change their mind about living together and are making a prayer for waiver, should be allowed this prayer as no useful purpose will be served by keeping the matter pending or allowing the things to get prolonged. I accordingly allow the prayer of the parties and hereby pass a decree of divorce by mutual consent, as prayed in Exhibit CI, which Along with the statements of the parties recorded shall form a part of the decree. The parties will remain bound by the terms of the compromise. This petition and the applications are disposed of in the above terms.

