

Manojakumari Vs. Bhasi

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Court : Kerala

Decided On : Jun-01-1998

Reported in : II(1998)DMC694

Judge : P.A. Mohammed and; G. Sivarajan, JJ.

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

Appeal No. : M.F.A. No. 1171 of 1997-D

Appellant : Manojakumari

Respondent : Bhasi

Advocate for Def. : None

Advocate for Pet/Ap. : Ranjith Thampan, Adv.

Disposition : Appeal allowed

Judgement :

P.A. Mohammed, J.

1. The appellant is the petitioner-wife before the Family Court, Thrissur in O.P. No. 20 of 1994, filed under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. She was the respondent in O.P. No. 352 of 1994 filed by the respondent-husband herein under Sections 12 and 13 of the said Act for declaring

that the marriage is null and void. Both the petitions were tried together and a common judgment was delivered by the Court below on 16.12.1996.

2. The marriage between the parties took place on 9.1.1994 according to the custom of the community to which they belong. Immediately after the marriage wife went to the husband's house. However, the respondent has withdrawn from the company of the appellant without any reasonable cause. Therefore, she has filed the above petition on 23.5.1994. The respondent-husband thereafter filed the petition, O.P. No. 352 of 1994, alleging fraud. His case is that the appellant is mentally unsound at the time of the marriage and that fact was not disclosed to him prior to the marriage. The Court below after the inquiry dismissed both the petitions. Being aggrieved by the judgment of the Court below, the wife has filed this appeal under Section 19 of the Act.

3. Heard both sides. Counsel on both sides uniformly submitted that they filed C.M.P. No. 1879 of 1998 praying to dissolve the marriage between the appellant and the respondent by a decree of divorce by mutual consent. The joint petition states that they have realised that their marital relationship has been wrecked beyond the scope of any reconciliation. In view of that situation they prayed for dissolution of the marriage as it is essential and necessary for their future welfare.

4. Counsel on both sides have brought to our notice that this Court allowed such petition in the decision reported in *Sreelatha v. Deepthy Kumar*, 1998 (1) KLT 195; and *Visalakshi v. Shivaraman Nair*, 1991 (1) KLT 910=II (1992) DMC 356. A Division Bench of this Court in *Visalakshi's* case (*supra*), observed thus:

'In cases like the present one where the parties are before the Appellate Court after having fought a battle in the Trial Court and where the Court is satisfied that the parties had sufficient time to think over their own future and have come to a definite conclusion that the marital relationship has to be terminated, in our opinion, the Court should take a liberal view of the procedural requirement and refrain from insisting on the waiting period of six months.'

Another Division Bench of this Court in *Sreelatha's* case (*supra*), has adopted the same view.

5. On reading the petition and on hearing the Counsel on both sides, we are satisfied that the marriage between the parties has irretrievably broken and it is practically and emotionally dead. In such circumstances the life of the spouses shall not be allowed to put in perpetual agony and despair. When such circumstance is brought to the notice of this Court, it is for it to find out a final solution on principles of justice and equity. Now the parties are before us after prolonged litigation mutually agreeing not to live in unison but to separate themselves permanently. If that be the welfare of the parties, this Court need not stand against it. The procedural requirement can be waived in view of the mutual consent recorded in writing. In view of the observation in Visalakshi's case (supra), we are not insisting for the procedural requirements in this case. We, therefore, propose to decide this petition seeking a decree for divorce on mutual consent by ourselves and not by remitting it to the Trial Court. We also dispense with the waiting period of six months as required for the culmination of the divorce process.

6. In view of what is said above, C.M.P. No. 1879 of 1998 is allowed. Accordingly we pass a decree for divorce on mutual consent between the appellant and the respondent. The appeal is disposed of as above.