

Santosh Vs. Kishan

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SooperKanoon Citation : sooperkanoon.com/850646

Court : Rajasthan

Decided On : Jan-20-2010

Judge : Vineet Kothari, J.

Appellant : Santosh

Respondent : Kishan

Judgement :

Vineet Kothari, J.

1. Heard learned Counsels.

2. This appeal is directed against the judgment and order dated 21.4.2006 of the learned District Judge, Pali by which the application under Section 9 of the Hindu Marriage Act was allowed in favour of the respondent-husband Kishan by the learned trial court, however, the said parties did not live in the same matrimonial home despite said decree of the learned court below.

3. During the pendency of this appeal, this Court tried for reconciliation between the parties but the reconciliation failed. Therefore, the parties by mutual consent filed the present application i.e. I.A. No. 952/2010 on 20.1.2010 under Section 13B of the Act for seeking divorce by mutual consent in this Court.

4. Both the learned Counsels submitted that the parties by mutual consent seek this divorce under the terms of mutual consent. Accordingly, the appellant-wife has returned back the gold ornaments received by her at the time of marriage with respondent-husband and further paid Rs. 35,000/- to the respondent-husband Kishan under the said agreement. The appellant-wife is working as Nurse in the Government Hospital, Sojat City whereas the respondent-husband Kishan is not employed anywhere and was making his livelihood by doing iron work for the people as he belongs to Dhobi caste.

5. This Court has perused the application under Section 13B of the Act which is duly supported by the affidavits of both the parties and they are present in Court and has also heard learned Counsels.

6. Learned Counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in K. Thiruvengadam and Anr. v. Nill (2008) 1 Femi-Juris C.C. 134(Mad), Amit Jain v. Taruna Jain 2008 M.L.R. 111, Anamika Shrivastava v. Vivek Shrivastava 2008 M.L.R. 264 and Vijay Kumar v. Smt. Surinder Kaur @ Sunita 2008 M.L.R. 465 in which it has been held that the waiting period of 6 months before the application under Section 13B of the Act is decided and divorce decree is granted by mutual consent under Section 13B of the Act can be waived by the Court even at the appellate stage and the decree of divorce by mutual consent can be granted.

7. Having heard learned Counsels and in view of the aforesaid judgments and the mutual consent of the parties duly supported by their affidavits, this Court allows the present appeal and setting aside the impugned judgment of learned trial court dated 21.4.2006 and allowing the application under Section 13B(2) of the Hindu Marriage Act grants divorce by mutual consent to both the parties. The marriage between the appellant-wife Santosh daughter of Pratap, by caste Dhobi with respondent-husband Kishan S/o Dhola, by caste Dhobi solemnized on 11th May, 2003 by Hindu Rites shall be deemed to be dissolved with effect from today. Divorce decree under Section 13B be made accordingly.

8. Appeal is accordingly disposed of. No costs.

