

Punit Kaur Vs. Prem Singh

Punit Kaur Vs. Prem Singh

SooperKanoon Citation : sooperkanoon.com/891029

Court : Himachal Pradesh

Decided On : Dec-19-2005

Reported in : AIR2006HP65

Judge : V.K. Gupta, C.J.

Acts : [Hindu Marriage Act, 1955](#) - Section 13B, 13B(1) and 13B(2); ;[Constitution of India](#) - Article 227

Appeal No. : C.M.P.M.O. No. 59 of 2004

Appellant : Punit Kaur

Respondent : Prem Singh

Advocate for Def. : Neel Kamal Sharma, Adv.

Advocate for Pet/Ap. : Sandeep Sharma, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V.K. Gupta, C.J.

1. This is a petition under Article 227 of the [Constitution of India](#) challenging the legality, correctness and validity of an order passed on 30th august, 2003 by the

Presiding Judge (Lok Adalat), Bilaspur, in HMA Petition No. 14 of 2003. By the impugned order the learned Court below has, by dissolving the marriage between the petitioner and the respondent, passed a decree of divorce based on consent in terms of Section 13-B of the [Hindu Marriage Act, 1955](#).

2. Parties were married in 1989. After May, 1998 the parties had not been carrying on well with each other. Whereas the petitioner Punit Kaur at one point of time had filed a petition for divorce against the respondent, the respondent Prem Singh had filed a separate case against the petitioner for restitution of conjugal rights. Subsequently both the aforesaid parties withdrew both the aforesaid cases and they, together on 4th January, 2003 filed a joint petition for dissolution of marriage by a decree of divorce based on consent of the parties in terms of Section 13-B of the Hindu Marriage Act. In this joint petition both the parties had stated that even though they were married in July, 1989, their marriage had broken down and they had decided to dissolve their marriage by mutual consent. It was stated in this petition that since 1998 the parties had been living separately. In support of this joint petition for divorce by mutual consent, on 4th January, 2003 itself the statements of both the parties were recorded by the learned Court below. In their statements (recorded on 4th January, 2003) both the parties had stated that their marriage had broken down and that they had been living separately since 20-5-2003 and that there was no possibility of any reconciliation between the parties. The parties, therefore, had decided to dissolve their marriage by obtaining a decree of divorce based on mutual consent. Vide order dated 4th January, 2003 itself the parties were given time by the Court to reconsider the matter and the petition was adjourned to 10th July, 2003.

3. It is in the aforesaid background that the petition came up before the Presiding Officer. Lok Adalat on 30th August, 2003, undoubtedly after a gap of more than six months of the date of presentation of the petition jointly filed by both the parties. The learned Court below in the course of the order passed on 30th August, 2003, made the following observations:

I have heard the parties. I find that the petitioner Smt. Punit Kaur stood married to Shri Prem Singh on 12-7-1989. The marriage of the parties had broken down. The

petitioner Smt. Punit Kaur had instituted petition for divorce against her husband. Later on Smt. Punit Kaur had got her divorce suit dismissed as withdrawn and both the parties had instituted petition for dissolution of their marriage with consent under Section 13-B of the Hindu Marriage Act. The statements of the parties were recorded on 4-1-2003. I find that the marriage of the parties has broken down and there is no chance of reconciliation. The parties had pressed for dissolution of their marriage with consent as per the petition and their statements dated 4-1-2003. As such, the marriage of the petitioner Smt. Punit Kaur with Shri Prem Singh is hereby dissolved with consent under Section 13-B of the Hindu Marriage Act with immediate effect. A decree sheet be prepared accordingly. The file be consigned to the record room after due completion.

4. The petitioner Punit Kaur was represented by a counsel, Shri R. L. Sharma, Advocate, before the Court below. The respondent Prem Singh had appeared in person along with his counsel Shri R. L. Mehta, Advocate.

5. Mr. Sandeep Sharrna, learned Counsel appearing for the petitioner has assailed the impugned order on the ground that it was incumbent upon the Court below to have recorded the statement of the petitioner in person for satisfying itself about the continuance of the consent and also for satisfying itself that the marriage was solemnized and that the averments in the joint petition are true. According to Mr. Sandeep Sharma, the fact that the petitioner was represented by a counsel would not meet the requirements of law because under Sub-section (2) of Section 13-B of the Act whenever a petition for divorce by mutual consent is taken up again after a gap of more than six months from the date of its original presentation, it is always incumbent that both the parties appear in person and the court records the statements of both the parties in person. According to Mr. Sharma, requirements of law are not met if the parties are represented by counsel in the court when a petition is taken up after a gap of more than six months for final disposal.

6. Sub-section (2) of Section 13-B of the Hindu Marriage Act, reads thus:

On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in Sub-section (1) and not later than eighteen months alter 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.

7. What Sub-section (2) stipulates is that whenever a petition presented under Sub-section (1) is taken up by the Court after a gap of more than six months but before the expiry of eighteen months from the date of its presentation for final disposal, and if the petition is not withdrawn in the meantime, the Court upon being satisfied after hearing the parties and after making such inquiry as it thinks fit that a marriage was solemnized and that the averments made in the petition are true, shall pass a decree of divorce declaring the marriage to be dissolved with effect from the date of decree. The expression, 'after hearing the parties' does not at all suggest that on the second occasion when the petition is taken up after a gap of more than six months the parties must present themselves personally before the Court. The expression 'after hearing the parties' clearly suggests that it is up to the parties either to appear personally or be represented by counsel duly appointed and engaged by them for this purpose for the purpose of being afforded opportunity of hearing to them.

8. In the case of Smt. Sureshta Devi v. Om Prakash reported in : [1991]1SCR274 , their Lordships of the Supreme Court have very clearly held that it is open to the parties, at any time after the presentation of the petition under Sub-section (1) of Section 13-B to withdraw the consent given (at the time of presentation of the petition) and if the consent is withdrawn the Court is bound to dismiss the petition. The withdrawal of the consent, whenever a petition is taken up on the second occasion, can always be communicated to the Court by a party personally or by her/his counsel duly engaged in the case. After all what would be the other purpose of engaging a counsel A counsel is a representative of the party, duly engaged, appointed and authorized to act on behalf of the party in every possible manner. What a party can do, a counsel can also do.

9. Neither in the present petition filed in this Court under Article 227 of the [Constitution of India](#) is there any averment nor was any such fact brought, to my

notice by Mr. Sandeep Sharma during the course of hearing of the case today that the petitioner at any time had instructed her counsel to inform the Court that she had withdrawn the consent. If that was the position perhaps the counsel could be held responsible of neglect or failure to perform and that perhaps could have been a ground for interference but since that is not the stand of the petitioner, I have no manner of doubt that the presence of the counsel in the Court on 30th August, 2003 in effect and substance amounted to the presence of the petitioner in the Court and, therefore, if it would be the contention of the petitioner that she had withdrawn the consent given on 4th January, 2003, such fact the petitioner could have brought to the notice of the Court and such fact with equal force the counsel would have also brought to the notice of the Court. Since no such fact was brought to the notice of the Court, the Court rightly presumed that the consent was continuing and, therefore, based on the averments in the petition, which the Court presumed to be true, it rightly passed the decree of divorce. No interference is called for.

The petition is dismissed.

CMP No. 96/2004.

In view of the dismissal of the main petition, the present application is also dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com