

Krishna Preetha Vs. Jayan Moorkkanatt

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Court : Kerala

Decided On : Feb-22-2010

Reported in : 2010(2)KLT459

Judge : R. Basant and; M.C. Hari Rani, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Section 13, 13B and 13B(2); ;[Divorce Act, 1869](#) - Section 10A and 10A(2); ;[Special Marriage Act, 1954](#) - Section 28; ;Marriage Laws (Amendment) Act, 1976; ;Divorce (Amendment) Act, 2001; ;Kerala High Court Act - Section 4; ;[Constitution of India](#) - Article 142

Appeal No. : Mat. App. No. 633 of 2008

Appellant : Krishna Preetha

Respondent : Jayan Moorkkanatt

Advocate for Def. : Subash Chand, ;Sandhya Raju, ;M.R. Rajesh and ;R. Sunil Kumar, Advs.

Advocate for Pet/Ap. : Shoby K. Francis, Adv. and ;G. Shrikumar, Amicus Curiae

Disposition : Appeal allowed

Judgement :

R. Basant, J.

1. Can the waiting period after filing the joint petition for divorce under Section 13B of the Hindu Marriage Act, Section 10A of the Indian Divorce Act and Section 28 of the Special Marriage Act be waived by the court suo motu or on the application of both parties?

2. This question arose for consideration in various petitions and we posted all such cases together for hearing. Sri. G Shrikumar, Advocate, has rendered assistance as amicus curiae for the court. We have had the advantage of hearing Advocates M/s S. Subash Chand, Sandhya Raju, M.R. Rajesh, R. Sunil Kumar, Shoby K. Francis and others on the question. We are answering that question in this case.

The finding on that question in this case will be followed in all other cases.

3. Section 13B of the Hindu Marriage Act, Section 10A of the Divorce Act and Section 28 of the Special Marriage Act are all identically worded except in so far as it relates to the stipulation of a larger period of separate residence under Section 10A of the Divorce Act. That distinction is of no consequence in so far as the question to be considered in this case, raised above, is concerned.

4. The concept of marriage being solemn, sacrosanct and indissoluble is deeply rooted in the Hindu and Christian thoughts and way of life. The concept of divorce was itself accepted and recognized in these systems of personal laws after a long period which witnessed slow evolution of the law. Divorces on the ground of contumacious fault of the spouses and on the ground of absence of unavoidable requirements/essentials for a healthy married life were recognized by law initially. But the voluntary dissolution of marriage at the option of the spouses was not accepted as a concept for a long period of time in many systems of personal laws. With the progressive development of the society and in its march towards modernism, marriage was looked upon more as a social institution entered into by the spouses voluntarily as an incident of the right to life and pursuit of happiness. The institution of marriage started to be reckoned and perceived as one of complementarity partnership, friendship, association, love, affection, caring and sharing etc. With that, the concept of marriage as an institution made in heaven over which spouses have no control started waning. With that came the further thought and idea of terminating the relationship of marriage by the spouses

voluntarily by mutual consent. Many a battle had to be fought to get the altered concepts accepted by the society. The change/transformation of mind set was not ushered in one fine morning or with ease. At long last we find individuals, community, society at large, public opinion and legislators yielding to such a concept of marriage and its dissolution and slowly accepting the idea of divorce by mutual consent. Secular personal law as also the different personal laws were constrained to swim with the times and accept the concept of divorce by mutual consent on joint application of the spouses.

5. We shall extract the provisions of Section 13B of the Hindu Marriage Act, Section 10A of the Divorce Act and Section 28 of the Special Marriage Act for easy reference. They read as follows:

13B. of the Hindu Marriage Act Divorce by mutual consent.-- (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) 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 after 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 solemnised 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.

10A of the Divorce Act - Dissolution of marriage by mutual consent.- (1) Subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Indian Divorce (Amendment) Act, 2001, on the ground that

they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of presentation of the petition referred to in Sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties in the meantime, the Court shall, on being satisfied, after hearing the parties and making such inquiry, as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of decree.

Section 28 of the Special Marriage Act - Divorce by mutual consent.-- (1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) 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 after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

(emphasis supplied)

6. The legislative scheme has to be understood first of all. We have already adverted to the winds of change in thought among the members of the polity relating to dissolution of marriage by mutual consent. With that background in mind the statutory provisions have to be understood. Subject to safeguards/conditions the concept of divorce by mutual consent on joint application of the spouses has been accepted by the legislature by these

provisions. There is no dispute now before us that the following are the essential non-negotiable conditions precedent insisted by law:

A. Solemnisation of marriage.

B. Mutual agreement of the spouses that the marriage should be dissolved.

C. Spouses must have been living separately for the specified period of one year/two years prior to the presentation of the application.

D. Spouses have not been able to live together during this period.

7. On these essential pre-requisites, there is no dispute after detailed discussions at the Bar. We must mention that an attempt was made initially to contend that conditions A and B along with either C or D above alone can be reckoned to be the essential pre-conditions. That contention cannot obviously be accepted. (Going by the plain language of the statutory provision with due regard to the rules of grammar and semantics as also the legislative objectives, such a contention is found to be unacceptable. As no counsel has pressed that contention after elaborate discussions at the Bar, we find it unnecessary to advert to that contention in any greater detail.

8. We now come to the identical Sub-section (2) in the above statutory provisions. It demands that there must be a mandatory minimum waiting period of six months after the filing of the petition before court. The court can take up the petition for its decision only after such period of waiting. The first motion is the filing of the joint application for divorce on the basis of mutual consent. Please note that the law mandates that the petition can be filed only after pre-conditions A, B, C and D above are satisfied. Even such a couple, who have filed the application after satisfying conditions A, B, C and D, can get a decree for divorce by mutual consent only after Sub-section (2) is complied with. The statutory purpose appears to be very clear and obvious. Pre-conditions A, B, C and D must simultaneously co-exist. The joint application must then be made. After making the application, the law wants the spouses to ponder over, consider, evaluate and contemplate the consequences of the journey on which they have embarked. The period of

minimum six to maximum 18 months is the period of mandatory re-consideration, re-evaluation, re-assessment and contemplation prescribed by the Legislature for the spouses to take the crucial decision. There is an underlying assumption that the dissolution of marriage even by mutual consent is too serious a matter to be left to the instant decision of even the most educated, competent and sober persons in the community. There is an assumption that such an important decision deserves to be thought over and slept over for a fairly long minimum period of time. The provisions in Sub-section (2) reflect the attitude of the polity and their representative legislature to marriage, its solemnity and the need for serious and deep contemplation before the spouses take the final decision to terminate the marital tie even by mutual consent. This decision of moment affecting their lives as well as their close relatives and off springs, the Legislature mandates, cannot be taken and confirmed by the parties and acted upon by a court without reasonable care, caution, consideration and contemplation. The Legislature in its wisdom has hence mandated that such consideration must be there for a minimum period of six months after making the initial motion/application. The cautious approach prescribed by the Legislature is part of the culture and civilization of the polity. Dissolution of marriage even by mutual consent, the Legislature appears to have realised, is too important a decision affecting not only the spouses but the community as a whole that the parties must be compelled to duly contemplate the issue for a minimum prescribed period of time before final plunge is made.

9. To us, the legislative mandate appears to be loud, clear and eloquent. If conditions A, B, C and D above co-exist, the spouses can make the application under Section 13B of the Hindu Marriage Act, Section 10A of the Divorce Act or Section 28 of the Special Marriage Act for divorce by mutual consent. Then, after filing such petition the spouses must sit back and contemplate. They must consider deeply and anxiously whether they should stick to their decision to seek divorce by mutual consent. If after six months, they find themselves steadfast and firm in their decision, they can make the second motion before court. The court will then, and then alone, accept and act upon the decision of the spouses. The court will not accept their decision earlier. Conditions A, B, C and D must co-exist before the application. After making the application, serious contemplation must be made which contemplation must be given for a period of at least six months.

10. Is the provisions of Sub-section (2) mandatory or directory? If it were not mandatory and can be reckoned as only directory, certainly the courts can be said to have a discretion which discretion can be invoked to waive the same in appropriate cases. The approach that we have made indicated above leaves not a trace of doubt in our mind that the provision is mandatory. Go by the purpose sought to be achieved or go by the language employed by the Legislature, the conclusion to us is inescapable that the provision is mandatory. The fact that the parties have been living separately for a longer period than the minimum prescribed under condition C above; that they, who are educated and competent, have taken an informed decision to seek divorce by mutual consent or that they have been fighting each other and litigating for a long period of time are all, according to us, irrelevant while considering the play of Sub-section (2) as all that can only justify their initial decision and consequent application to get the marriage dissolved by mutual consent. Sub-section (2), according to us, mandates unambiguously that after the decision under Sub-section (1) is taken and the petition is filed the spouses have to wait for a minimum period of six months in contemplation. The anxiety of the system, and the culture and civilization which the system represents, to avoid the trauma of a divorce if possible is reflected eminently in Sub-section (2). We have no hesitation to agree that Sub-section (2) is mandatory and not merely directory.

11. Even hard cases should not persuade a court to lay down bad law. The court cannot adopt an attitude in derogation of the legislative wisdom that a wise decision regarding dissolution of marriage by mutual consent can be taken by the parties only after they contemplate the pros and cons for a minimum period of six months after making the initial motion/application for divorce on the ground of mutual consent under Sub-section (1).

12. There is one more angle from which the question has to be looked at. Sub-section (2) clearly suggests that if spouses or either spouse chooses not to make a subsequent motion after six months and within a period of 18 months, the petition lapses and shall meet the fate of dismissal. The consent for divorce by mutual consent must manifest when the application is made under Sub-section (1) and it must continue till the second motion is made within the stipulated period -

'after six months before the expiry of 18 months'. This implies and declares that spouses or either of them can withdraw the consent within the period of mandatory contemplation (six to 18 months). This means further that the law concedes to the parties the option and liberty, notwithstanding the fact that they have made the initial application, to withdraw the consent for dissolution of marriage together or unilaterally till the period of six months or 18 months as the case may be, has elapsed. If that period is dispensed with and waived it would virtually stultify and frustrate the statutory scheme of giving option to a party who has initially consented to a divorce to alter his/her stand and refuse to agree for dissolution by mutual consent. The very real option given by the Legislature to a party who has made the application to withdraw consent will lose all its sheen and meaning if such period were waived and decree for dissolution by mutual consent is granted before the elapse of the period of 6 months. That cannot obviously be the law.

13. This would work out great prejudice and unnecessary delay, it is urged. How? We queried. Parties will have to wait unnecessarily for six months, it is argued. That waiting for six months cannot be described by a court to be unnecessary as that is the period fixed by the Legislature in its wisdom to compel the parties to reflect and contemplate. How can the said minimum period of six months be held to be unnecessary by a court? This waiting for the period of six months cannot be stated to result in undeserved prejudice also. It may appear to them to be unnecessary and causing prejudice. But the legislative mandate is that six months waiting is not unnecessary; but essential and necessary for the spouses to realise themselves, to discover themselves and to confirm their initial decision after contemplation if they choose. By no stretch of imagination can such waiting be held to be unnecessary or causing prejudice. To describe or reckon the said period of waiting as unnecessary and causing prejudice is to simply question the wisdom of the Legislature on a civilisational and cultural aspect- regarding solemnity of marriage and the need/option to dissolve such marriage by mutual consent when no other reason is shown to exist in law justifying such dissolution of the solemn institution of marriage. No court can commit the indiscretion of questioning the wisdom of the Legislature, within the area of its legislative competence.

14. We hence have no hesitation whatsoever to agree, by ascertaining and appreciation of the legislative object and purpose as also by the fundamental analysis of the statutory provision which is expressed in plain language that the stipulations of Sub-section (2) are mandatory and no court can waive the statutory period except the Apex Court which under Article 142 of the Constitution can act even beyond the ordinary law in order to achieve complete justice in the peculiar facts of a given case.

15. We shall now look at the precedents. We need only refer to the decisions. As we shall later explain, it does not appear to be necessary to us to delve deeper into these precedents in the light of the binding law declared by the Supreme Court subsequently. In the following decisions, the courts appear to have waived the waiting periods holding that the interests of justice demand such waiving and dispensing with the period of waiting. The following decisions of the Kerala High Court appear to be relevant on this aspect:

1. Sreelatha v. Deepthy Kumar 1998 (1) KLT 195 (D.B.)
2. Dr. M.G. Viji v. P.T. Omana 1998 (2) KLJ 446 (DB)
3. Manojakumari v. Bhasi 1998 (2) KLT 858 (DB)
4. Dr. P.B. Prasad v. Deepthi 1999 (2) Kar LJ 520 (Single Bench)
5. Gracy v. Cleetus 2002 (1) KLT 98 (Single Bench)

We may incidentally note that the Division Benches referred above though they opined that the period six months can be dispensed with had no occasion to delve deeper into the question to decide whether the provisions are mandatory or directory or the scheme of the statutory provision.

16. We do further note that some other High Courts have also taken the view that the period of waiting can be waived in the interests of justice.. Reference can be made to the following decisions:

1. K. Thiruvengadam and Anr. v. Nil : AIR 2008 Mad. 76 (Single Bench)

2. Girdhari Maheshwari v. Nil : AIR 2009 Raj. 38 (D.B.)
3. Sudershan Ram Bhasin : AIR 2002 HLR P. & H. 270 (Single Bench)
4. Preetha Nair v. Gopkumar AIR 2001 M.P. 370 (Single Bench)
5. In Re: Grandhi Venkata Chitti Abbai : AIR 1999 A.P. 91 (Single Bench).
6. Smt. Roopa Reddy v. Prabhakar Reddy : AIR 1994 Karnt. 12 (DB)
7. Suresh Kumar Batra v. Varsha Batra 1994 (2) HLR P & H 510 (Single Bench)
8. Hanamappa Chetrappa Koppal and Anr. v. Nil 1991 (2) HLR Karnt. 211 (Single Bench)
9. Dr. Dhiran Harilal Garasia v. N. Mansu : AIR 1988 Guj. 159 (Single Bench)
10. Jarnail Kaur v. Bant Singh 1987 (1) HLR P. & H. 75 (Single Bench)
11. K. Omprakash v. K. Nalini : AIR 1986 A.P. 167 (D.B.)

17. The Kerala High Court, at least, in three decisions appears to have taken the view that such dispensing with the waiting period is not permissible and the spouses or either spouse shall have the option to withdraw the consent within the stipulated minimum period of six months. Those decisions are:

1. K.I. Mohanan v. Smt. Jeejabai 1986 KLJ 833 (D.B.)
2. K.K. Anirudhan v. T. Prasanna Kumari 1989 (1) KLT 42 : 1989 (1) HLR Ker. 682 (Single Bench)
3. Rekharani v. Prabhu 2007 (3) KLT 917 (D.B.)

18. This view that the period of waiting cannot be waived, we find, has been taken by other High Courts also. We refer to three such decisions below:

1. Gautam Basu v. Nina Basu 1991 (2) HLR Cal. 459 (D.B.)
2. Mohinder Pal Kaur v. Gurmit Singh 2002 (1) HLR P. & H. 537 (Single Bench)

3. Principal Judge, Family Court, Nagpur v. Nil : AIR 2009 Bom. 12 (D.B.)

19. In the light of the conflicting views, we may have taken a decision to refer the question to the Full Bench under Section 4 of the Kerala High Court Act. But we find that the decision of the Supreme Court in Anil Kumar Jain v. Maya Jain : 2009 (12) Scale 115 is available now accepting the above view reasoned by us to confirm that the period of waiting cannot be dispensed with. After considering the apparent conflict of views, the two Judge Bench of the Supreme Court expressed itself in the following words in paras. 16,17 and 18:

16. Although, the decision rendered in Sureshta Devi (supra) was referred to in the decision rendered in Asokh Hurra's case (supra) and it was observed therein that the said decision possibly required reconsideration in an appropriate case, none of the other cases has dealt with the question which arose in Sureshta Devi's case (supra), namely, whether in a proceeding under Section 13-B of the Hindu Marriage Act, consent of the parties was required to subsist till a final decree was passed on the petition. In all the subsequent cases, the Supreme Court invoked its extraordinary powers under Article 142 of the [Constitution of India](#) in order to do complete justice to the parties when faced with a situation where the marriage-ties had completely broken and there was no possibility whatsoever of the spouses coming together again. In such a situation, this Court felt that it would be a travesty of justice to continue with the marriage ties. It may, however, be indicated that in some of the High Courts, which do not possess the powers vested in the Supreme Court under Article 142 of the Constitution, this question had arisen and it was held in most of the cases that despite the fact that the marriage had broken down irretrievably, the same was not a ground for granting a decree of divorce either under Section 13 or Section 13-B of the [Hindu Marriage Act, 1955](#).

17. In the ultimate analysis the aforesaid discussion throws up two propositions. The first proposition is that although irretrievable break-down of marriage is not one of the grounds indicated whether under Sections 13 or 13-B of the [Hindu Marriage Act, 1955](#), for grant of divorce, the said doctrine can be applied to a proceeding under either of the said two provisions only whether the proceedings are before the Supreme Court. In exercise of its extraordinary powers under Article

142 of the Constitution the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in Section 13-B of the aforesaid Act. This doctrine of irretrievable break-down of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution. Neither the civil courts nor even the High Courts can, therefore, pass orders before the periods prescribed under the relevant provisions of the Act or on grounds not provided for in Section 13 and 13-B of the [Hindu Marriage Act, 1955](#).

18. The second proposition is that although the Supreme Court can, in exercise of its extraordinary powers, under Article 142 of the Constitution, convert a proceeding under Section 13 of the [Hindu Marriage Act, 1955](#) into one under Section 13-B and pass a decree for mutual divorce, without waiting for the statutory period of six months, none of the other Courts can exercise such powers. The other Courts are not competent to pass a decree for mutual divorce if one of the consenting parties withdraws his/her consent before the decree is passed. Under the existing laws, the consent given by the parties at the time of filing of the joint petition for divorce by mutual consent has to subsist till the second stage when the petition comes up for orders and a decree for divorce is finally passed and it is only the Supreme Court, which, in exercise of its extraordinary powers under Article 142 of the Constitution, can pass orders to do complete justice to the parties.

(emphasis supplied)

20. Irretrievable breakdown of marriage as accepted by both the spouses who filed the application for dissolution of marriage by mutual consent cannot also persuade the courts to dispense with or waive the mandatory period of waiting/contemplation. An argument that the Supreme Court was not considering exactly the same question - play of Sub-section (2) of Section 13B of the Hindu Marriage Act and Section 10A(2) of the Divorce Act is irrelevant as even obiter of the Supreme Court - When the law is declared clearly must bind this Court. More over the Supreme Court was considering the question as to which court under what circumstance can reckon irretrievable break down of marriage as a relevant

ground and for what purpose. The Supreme Court has expressed clearly that only the Supreme Court acting under Article 142 of the Constitution can take into consideration the ground of irretrievable break down of marriage which is not accepted and recognized by law of the land even now as a ground for divorce. For the purpose of granting reliefs including the relief of dispensing with/waving the period of waiting under Section 13B of the Hindu Marriage Act and Section 10A of the Divorce Act, the fact of irretrievable break down of marriage cannot be taken into reckoning by other courts.

21. The fact that the Supreme Court in exercise of its powers under Article 142 of the Constitution has chosen to grant reliefs to parties in the cases pending before them -including the relief of dispensing with the period of waiting under Section 13B(2) of the Hindu Marriage Act/Section 10A(2) of the Divorce Act cannot now be reckoned as observations clothing the Family Courts, District Courts and the High Courts with authority to ignore the mandatory provisions of Sub-section (2) and dispense with the period of waiting. The statement of the Supreme Court in para-17 that neither the civil courts nor even the High Courts can therefore pass orders before the period prescribed under the relevant provisions of the Act or on the ground not provided for in Section 13 and Section 13B of the Hindu Marriage Act is in this context crucial and vital.

22. We may, in these circumstances summarise the law and state that not only conditions A, B, C and D below; but condition E below also are mandatory requirements that must all co- exist before the court's power under Section 13B of the Hindu Marriage Act, Section 10A of the Divorce Act and Section 28 of the Special Marriage Act to pass the decree for dissolution on the basis of a joint application for divorce on mutual consent is invoked:

A. Solemnisation of marriage.

B. The mutual agreement of the spouses that the marriage should be dissolved.

C. That the spouses have been living separately for the specified period of one year/two years prior to the presentation of the application.

D. They have not been able to live together during this period; and

E. Minimum period of six months and maximum period of 18 months has elapsed from the date on which the application for divorce under Section 13B of the Hindu Marriage Act and Section 10A of the Divorce Act is filed and the spouses have made the second motion for dissolution thereafter.

23. Having so understood the law we shall now come back to the specific facts of the instant case.

24. Marriage between the parties had admittedly taken place on 21.1.2001. A child was born in the wed-lock on 27.12.2001. The spouses started residing separately on 29.10.2006. On 4.2.08 the husband filed an application for divorce on the ground of marital contumaciousness under Section 13 of the Hindu Marriage Act. Summons was issued on 10.3.2008. The matter was posted for appearance to 30.4.2008. Respondent entered appearance. Parties were referred for counselling. The case was posted to 16.7.2008. In the meantime, the matter came up for hearing in connection with petitions on 6.5.2008, 15.5.2008, 22.5.2008, 30.5.2008, 31.5.08, 3.6.2008, 7.6.2008 and 19.7.2008. In the meantime a joint application for divorce under Section 13B was filed jointly by the parties on 30.5.08. The records show that while the said application -I. A. No. 2275/08 filed under Section 13B of the Hindu Marriage Act was pending, the matter came up for hearing on 31.5.2008, 3.6.2008, 7.6.2008 and 19.7.2008. It was there after that the impugned order dissolving the marriage under Section 13B was passed on 26.7.2008. On 7.6.2008 after the joint application under Section 13B was filed, there is a noting in the order sheet as follows:

Not settled. R1 (the appellant herein) is withdrawing consent. Counselling terminated. For orders.

It is thereafter that the impugned order dissolving the marriage under Section 13B was passed on 26.7.08.

25. After the impugned order was passed on 26.7.2008, the petitioner has rushed to this Court to file this appeal on 27.8.2008. Even if we reckon the joint application

under Section 13B to have been properly instituted on 30.5.08, we have unmistakable indications to show that on 7.6.2008 the appellant had withdrawn her consent. She having come to this Court with this appeal on 27.8.2008 disputing her consent we have unassailable indications to show that within the period of six months she had contemplated and had taken a decision against divorce by mutual consent under Section 13B.

26. We must further note that there is no specific application by the parties to dispense with the period of waiting under Section 13B(2). The view we have already taken is that even if there be such an application to dispense with the period of waiting, the court has no jurisdiction to waive/dispense with the said period.

27. The conclusion is inevitable in these circumstances that the impugned order passed under Section 13B of the Hindu Marriage Act is not valid, correct or proper. The same calls for interference. The challenge succeeds.

28. The question arises as to what further orders are liable to be passed. We have already taken the view that the order passed under Section 13B on the basis of I.A. No. 2275/08 filed in O.P. No. 146/08 is not valid and proper. But it remains that O.P. No. 146/08 has to be disposed of in accordance with law. Appropriate directions can be issued.

29. In the result:

(a) This appeal is allowed.

(b) The impugned order passed under Section 13B of the Hindu Marriage Act dissolving the marriage between the appellant and the 1st respondent by mutual consent is set aside.

(c) The appellant having withdrawn her consent, I.A. No. 2275/08 is dismissed.

(d) The court below is directed to dispose of O.P. No. 146/08 afresh in accordance with law as expeditiously as possible.

(e) The Registry shall forth with send back the records to the court below.

(f) The parties shall appear before the Family Court on 5.4.2010 to continue the proceedings.

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