

Sunny Vs. Sujata

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Court : Delhi

Decided On : Apr-27-2012

Judge : The Honourable Ms. Justice Veena Birbal

Appeal No. : MAT.APP. NO. 38 OF 2012

Appellant : Sunny

Respondent : Sujata

Judgement :

(ORAL)

CM No. 7545/2012 (exemption)

Exemption as prayed for is allowed subject to just exceptions.

Application stands disposed of.

MAT.APP. 38/2012

1. Admit.
2. With the consent of parties the matter is taken up for final disposal.
3. Briefly, the facts are as under:-

The parties had filed a joint petition under Section 13(B)(1) of the Hindu Marriage Act (hereinafter referred to as 'the Act') for dissolution of their marriage and decree of divorce by mutual consent stating therein that their marriage was solemnized on 24.06.2011 at Arya Samaj Mandir, Jamuna Bazar, Delhi, according to Hindu rites and ceremonies. Since that day itself, they are living separately from each other. Efforts of reconciliation between them had also failed. Accordingly, they decided to dissolve their marriage u/s 13B (1) and (2) of the Act out of their free will and desire. They had also stated having settled all their claims. Along with the petition u/s 13B (1) of the Act, an application under Section 14 of the Act was filed. Almost the same averments were made in the said application as were stated in the petition under Section 13B (1) of the Act. They had prayed that the separation period of one year as prescribed under Section 13B (1) of the Act had not elapsed, as such, the same be waived u/s 14 of the Act. The said application was dismissed by the learned ADJ, Delhi vide impugned order dated 15th March, 2012. The said order has been assailed by filing present appeal.

4. The learned counsel for appellant has argued that the parties have not lived together after their marriage and all the efforts of reconciliation between them have failed and there is no possibility of their living together, as such permission be granted to file petition under Section 13B(1) of the Act before expiry of one year of separation. It is contended that under Section 14(1) of the Act the court has power to waive the said period of one year.

5. Section 13B(1) of the Act reads as under:-

“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 solemnized 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.”

6. The requirements under Section 13B(1) are as under:-

“(i) They have been living separately for a period of one year;

(ii) They have not been able to live together, and

(iii) They have mutually agreed that marriage should be dissolved.”

7. A plain reading of section 13B(1) of the Act makes it clear one of the conditions is living separately for a period of one year or more before the presentation of petition for divorce by mutual consent. The period of ‘living separately’ prescribed therein is a statutory period.

8. Section 14 of the Act bars the filing of the petition for dissolution of marriage by a decree of divorce unless on the date of the presentation of the petition one year has elapsed from the date of marriage. The proviso to said section provides that the court may on application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent. The reading of the section makes it clear that it is applicable to the divorce proceedings referred under section 13 of the Act.

9. In *Anil Kumar Jain Vs. Maya Jain: II* (2009) DMC 449 (SC), the question involved was whether decree can be passed for mutual consent u/s 13B of the Act when one of the petitioners withdraws consent to such decree prior to passing of such decree. While dealing with the provisions of Section 13(B) of the Act, the Supreme Court has held that neither the civil courts nor the High Courts can pass orders before the period prescribed under the relevant provisions of the Act or on grounds not provided for in Section 13 and 13B of the Act.

10. In *Miten S/o Shyamsunder Mohota (Goidani) and Anr. Vs. Union of India (UOI): 2008(3) ALLMR 507*, the constitutional validity of provisions of Section 13B of the Act was challenged. In the said case, one of the contentions raised was that period of one year provided under section 13B(1) of the Act is merely directory and can be suitably waived or altered by the court depending upon the facts and circumstances of the case and compliance of the conditions u/s 13B(1) of the Act

is not mandatory. While rejecting the contentions, the Bombay High Court has held as under:-

“13.1. Provisions of Section 13B of the Act are mandatory and the condition precedent to the presentation of the petition set out therein had to be satisfied strictly. Further, Section 14 of the Act prior to 1976 amendment had put a further bar stating that notwithstanding anything contained in the Act, the Courts shall not be competent to entertain any petition for dissolution of marriage by a decree of divorce unless the petition had been presented after a lapse of three years since the date of marriage. However, proviso to Section 14(1) provided an exception to the effect that a petition could be presented even before the expiry of the said period of three years if circumstances of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent existed and in such cases the Courts may, after hearing, pronounce a decree subject to the condition that the decree shall not have effect until after the expiry of three years. In this backdrop and while amending the Act in the year 1976, the Legislature while keeping the three of its aforementioned objects in mind, reduced the period from three years to one year and maintained the language of Section 14 as well as its proviso otherwise intact. In other words, the Legislature did not alter or change the contents of ingredients of Section 14 except to the extent of reducing the period from three years to one year. This is despite the fact that the Law Commission in its recommendations relating to Section 14 of the Act in its 59th Report in March, 1974 had asked for deletion of Section 14 of the Act.

14. As already noticed, by the same Act 68 of 1976, Section 14 was amended and Section 13B was introduced in the Act. The language of Section 13B is clear and unambiguous. The Legislature in its wisdom did not introduce any relaxation in Section 13B of the Act. There is nothing in the language of section which can suggest that the provisions of Section 13B are simpliciter procedurally directed and can be moulded by the Court in exercise of its judicial discretion depending on the facts and circumstances of the case. This provision is intended to liberalise the provisions relating to divorce. Being aware of the existing provisions, report of the Law Commission and the need of the society still the Legislature chose not to add any proviso granting relaxation to the conditions imposed under Section 13B(1)

and/or 13B(2). It would not be permissible for the Court to read the expression 'living separately for a period of one year or more' as by adding the word 'may' or for such period as the Court in its discretion may consider appropriate. We shall shortly proceed to discuss the purpose of introduction of Section 13B and its object. It is a settled rule of interpretation that Court while interpreting the statutory provisions would not add or subtract the words from the section nor would it give meaning to the language of the section other than what is intended on the plain reading of the provision. Reference can be made to the judgment of the Supreme Court in Vijayalakshamma and Anr. v. B.T. Shankar MANU/SC/0200/2001: [2001]2SCR769.”

11. In Ms. Urvashi Sibal and Anr Vs. Govt. of NCT of Delhi: AIR 2010 Delhi 157, while dealing with the same question as is raised in the present case, after discussing the relevant provisions of the Act and the relevant case law, this court has held as under:-

“Thus, it is clear that the statutory period of one year required to be maintained by the parties for filing a petition under Section 13B of the Act are independent of the provisions contained in Section 14 of the Act. Section 13B when read is a complete Code in itself and, therefore, for filing a petition under Section 13B of the Act, the parties cannot be allowed to invoke Section 14 seeking waiver of the statutory period of one year from separation for filing a petition under Section 13B of the Act. “

12. Similar view has been taken in Mohan Saili and Sonali Singh Vs Nil: 2010(175) DLT 259 wherein it is held that period of one year for living separately under section 13B (1) of the Act is not directory and the same is mandatory and the same cannot be condoned by the Court under section 14 of the Act.

In view of the above discussion, no illegality is seen in the order of the trial court. Accordingly, appeal is dismissed.

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