

Shashi Vs. Sunny Bhumbra

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Court : Punjab and Haryana

Decided On : Jan-09-2012

Judge : Satish Kumar Mittal & T.P.S. Mann

Appeal No. : F.A.O. No.M-133 of 2009

Appellant : Shashi

Respondent : Sunny Bhumbra

Judgement :

SATISH KUMAR MITTAL, J. (Oral)

This matrimonial appeal was filed by Smt. Shashi (wife) against the judgment and decree dated 5.12.2008 whereby the petition filed by the husband under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for Restitution of Conjugal Rights was allowed and a decree for Restitution of Conjugal Rights was passed. During the pendency of the said appeal the matter was referred to the Lok Adalat where both the parties have agreed to dissolve the marriage by mutual consent on certain terms and conditions. Consequently an application bearing No.19719-CII of 2011, was filed for converting the petition under Section 9 of the Act for Restitution of Conjugal Rights into a petition under Section 13-B of the Act for dissolution of the marriage by mutual consent. Vide order dated 19.07.2011 terms and conditions of divorce by mutual consent was reduced into writing by way of a compromise which was attached as Annexure-A to the

application filed under Section 13-B of the Act. The said application was allowed and parties were permitted to convert petition under Section 9 of the Hindu Marriage Act for Restitution of Conjugal Rights into a petition under Section 13-B of the Act for divorce by mutual consent. Thereafter as per the terms of compromise criminal cases pending against the husband were quashed by this Court vide order dated 9.12.2011. Thereafter before Daily Lok Adalat of this Court, the parties once again made their respective statements and on 19.12.2011 the statement of husband-respondent was recorded which reads as under:-

“I had got married to Shashi d/o late Sh. Sher Singh on 18.6.2005 in accordance with Hindu Religious Rites. I had filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights against my wife-Shashi before the Matrimonial Court at Nawanshahar on 29.3.2006. The said petition was allowed by judgment and decree dated 5.12.2008. There is no issue out of the wed-lock. Despite the decree of restitution of conjugal rights my wife did not join the matrimonial home and rather filed an appeal against the judgment and decree dated 5.12.2008 vide FAO No.M- 133 of 2009. During the pendency of the appeal I and my wife decided to part company by way of grant of decree of divorce by mutual consent. We have filed an application jointly for converting the present proceedings in the appeal to one under Section 13-B of the Hindu Marriage Act wherein a prayer has also been made for reckoning the compulsory waiting period of six months under Section 13-B(ii) towards the period spent in the litigation between the parties before the Matrimonial Court as well as before the Hon'ble High Court. We have also filed a joint petition under Section 13-B of the Hindu Marriage Act for the grant of decree of divorce by mutual consent. One of the condition for grant of decree of divorce by mutual consent is that I shall pay a sum of `1,25,000/- to Smt. Shashi and on payment of the said amount she would not have any claim, monetary or otherwise, against me. I have paid an amount of ``75,000/- and `49,000/- by way of two bank drafts in the name of Smt. Shashi which are lying with her counsel Sh. Harsh Aggarwal. I have also paid another sum of `1,000/- by cash to Sh. Harsh Aggarwal, Advocate for payment to Smt. Shashi. Shashi had lodged an FIR No. 36 dated 29.10.2006 at Police Station Pojjewal, District Nawanshahar under Section 406/498A IPC against me and my parents. The other condition for grant of decree of divorce was that on filing of a

petition by me and my parents under Section 482 of the Code of Criminal Procedure the appellant i.e. Shashi would render all possible help and make a statement before the Court that she has no objection if the FIR aforesaid and the further proceedings taken pursuant to the said FIR are quashed. My parents had filed Crl. M. No.M-27789 of 2008 for quashing the aforesaid FIR and further proceedings pursuant to the said FIR. I has also filed a similar Crl. M. No.M-33531 of 2011 with the same prayer as made by my parents in the aforesaid Criminal Miscellaneous Application. A learned Single Judge of the Hon'ble Punjab and Haryana High Court vide order dated December 09,2011 has allowed both the aforesaid petitions and quashed the FIR and further proceedings taken pursuant thereof. Photo-copies of the orders passed in the aforesaid Miscellaneous Applications are placed on record. Accordingly, I pray that let a decree of divorce by mutual consent may be granted.”

Thereafter statement of the appellant-wife was recorded which reads as under:-

“I have heard the statement of Sh.Sunny Bhumbla. The same is correct and I accept the same. Let the amount of `1,25,000/- given by Sh.Sunny Bhumbla be kept with my counsel Sh. Harsh Aggarwal, Advocate and be given to me on the grant of decre of divorce by mutual consent by the Hon'ble High Court.”

On the same day the Permanent Lok Adalat passed the following orders:-

“Respondent-Sunny Bhumbla (husband) s/o Sh. Parmanand had got married to appellant-Shashi on 18.6.2005 in accordance with Hindu Religious Rights. Sunny Bhumbla had filed a petition under Section 9 of the Hindu Marriage Act against his wife Shashi for restitution of conjugal rights before the Matrimonial Court at Nawanshahar on 29.3.2006. A decree of restitution of conjugal rights was passed in favour of Sunny Bhumbla against his wife by the Matrimonial Court on 5.12.2008. Against judgment and decree dated 5.12.2008 Shashi (wife) had filed the present appeal. There is no issue out of the wedlock. During the pendency of the appeal both the parties i.e. Husband and wife decided to part company from each other by way of grant of decree of divorce by mutual consent. For that purpose miscellaneous application was filed for converting these proceedings into one under Section 13- B of the Hindu Marriage Act and a prayer was also made to

reckon the compulsory waiting period of six months provided under Section 13-B(ii) of the Hindu Marriage Act towards the period spent by the parties in litigation under the Act before the Matrimonial Court and before the Hon'ble Punjab and Haryana High Court. A separate petition supported by an affidavit of the parties under Section 13-B of the Hindu Marriage Act has also been filed. Statements of Sunny Bhumbra-respondent and Shashi-appellant have been recorded today.

Regulation 17(7) of the Rules known as National Legal Services Authority (Lok Adalats) Regulation, 2009 provides as under:

“17.7: Lok Adalat shall not grant any bail or a divorce by mutual consent.”

In view of the aforesaid provision, we sent the case back to the Hon'ble High Court for making appropriate orders for grant of decree of divorce by mutual consent. Since the parties are to appear before the Bench hearing the appeal we direct the Registry to fix this case before the appropriate Bench on 9.1.2012. Parties are directed to appear before the Hon'ble High Court before which the case is fixed on 9.1.2012. Copy of the order and statements be given to learned counsel for the parties.”

Today both the parties are present in Court. They stated that they stand by their earlier statement made for dissolution of marriage by mutual consent. In terms of the agreement arrived at between the parties two drafts bearing No.441312 amounting to `75,000/- and No.999641 amounting to `49,000/- in the name of Smt. Shashi d/o Sher Singh, were handed over to counsel for appellant-wife on the last date which the counsel has handed over today to the appellant-wife, who is present in Court. An amount of `1000/- has been paid in cash. As per the compromise agreed amount has been paid and the FIR has already been quashed, therefore, both the parties states that their marriage be dissolved by mutual consent. The parties have also filed an application bearing No.19720-CII of 2011 for exemption of period. The parties are living separately for the last more than six years. Accordingly, the petition under Section 13-B of the Act is allowed and the marriage between the parties is hereby dissolved. Decree sheet be prepared.