AMIT KUMAR v. SUMAN BENIWAL , 2022 SCeJ 754, 2022 PLRonline 6507

SUPREME COURT OF INDIA

Before:- Indira Banerjee and J. K. Maheshwari, JJ.

AMIT KUMAR – Appellant

Versus

SUMAN BENIWAL – Respondent

Civil Appeal No.7650 of 2021 (Arising out of SLP (Civil) No.20108 of 2021.

11.12.2021.

(i) Hindu Marriage Act, 1955, S. 13B(2) , 14 – Object of Section 13B(2) read with Section 14 is to save the institution of marriage, by preventing hasty dissolution of marriage – Legislature has, in its wisdom, enacted section 13B (2) of the Hindu Marriage Act to provide for a cooling period of six months from the date of filing of the divorce petition under Section 13B (1), in case the parties should change their mind and resolve their differences – It is often said that "time is the best healer" – With passage of time, tempers cool down and anger dissipates – The waiting period gives the spouses time to forgive and forget – If the spouses have children, they may, after some time, think of the consequences of divorce on their children, and reconsider their decision to separate – Even otherwise, the cooling period gives the couple time to ponder and reflect and take a considered decision as to whether they should really put an end to the marriage for all time to come. [Para 17, 18]

Held,

Where there is a chance of reconciliation, however slight, the cooling period of six months from the date of filing of the divorce petition should be enforced. However, if there is no possibility of reconciliation, it would be meaningless to prolong the agony of the parties to the marriage. Thus, if the marriage has broken down irretrievably, the spouses have been living apart for a long time, but not been able to reconcile their differences and have mutually decided to part, it is better to end the marriage, to enable both the spouses to move on with the life.

(ii) Precedent – Judgment is a precedent for the issue of law that is raised and decided. [Para 23]

(iii) Hindu Marriage Act, 1955, S. 13B(2) – Statutory period – Waiver of – Irreconcilable differences. – Parties are both well-educated and highly placed government officers – They have been married for about 15 months – The

marriage was a non - starter – Admittedly, the parties lived together only for three days, after which they have separated on account of irreconcilable differences – The parties have lived apart for the entire period of their marriage except three days – It is jointly stated by the parties that efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife – Even after over 14 months of separation, the parties still want to go ahead with the divorce – No useful purpose would be served by making the parties wait, except to prolong their agony – Decree of divorce by mutual consent passed under section 13B of the Hindu Marriage Act, 1955, waiving the statutory waiting period of six months under Section 13(B) (2) of the said Act. [Para 28, 29]

For the Appellant :- Mr. Vikram Hegde, Mr. Shantanu Lakhotia, Advocates. For the Respondent :- Mr. Yash Sinha, Ms. Ayushi Rajput, Ms. Rangoli Seth, Mr. Prateek K Chadha, Mr. Shashank Ratnu, Advocates.

JUDGMENT

Indira Banerjee, J. – Leave granted.

2. This appeal is against a judgment and order dated 17th November 2021 passed by the High Court of Punjab and Haryana dismissing the Civil Revisional Application being CRA No. 2537/2021(O&M) filed by the Appellant against an order dated 12th October 2021 passed by the Family Court, Hissar, refusing the prayer of the Appellant and the Respondent, to waive the requirement under section 13B(2) of the Hindu Marriage Act, 1955 to make the motion for a decree of divorce after at least six months from the date of filing the petition for divorce by mutual consent under Section 13B(1) of the said Act.

3. The Appellant and the Respondent, both of whom are educated and well placed in life (the Appellant being an IPS officer and the Respondent an IFS officer), were married according to Hindu rites on 10th September 2020. Admittedly, on account of irreconciliable differences, the Appellant and Respondent separated on 13th September 2020, that is, precisely three days after marriage.

4. On or about 30th September 2021, after over one year of separation, the Appellant and the Respondent filed a petition in the Family Court under section 13B of the Hindu Marriage Act for a decree of divorce by mutual consent. section 13B of the Hindu Marriage Act reads as under:

"**13B 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."

5. In terms of section 13B(1) of the Hindu Marriage Act, the parties to a marriage might file a petition for dissolution of marriage, by decree of divorce by mutual consent, on the ground that that they have been living separately for a period of one year or more, and that they have not been able to live together and have mutually agreed that the marriage should be dissolved.

6. Sub-section (2) of section 13B of the Hindu Marriage Act provides that the Court shall pass a decree of divorce, declaring the marriage to be dissolved with effect from the date of the decree, 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) of Section 13B, but not later than 18 months after the said date, after making necessary enquiries, if the petition is not withdrawn in the meantime.

7. Section 14 provides that notwithstanding anything contained elsewhere in the Hindu Marriage Act, it shall not be competent to the Court to entertain any petition for dissolution of a marriage by a decree of divorce, unless on the date of presentation of the petition, one year has elapsed since the date of marriage.

8. In terms of the proviso to Section 14, the Court may, on application made to it, in accordance with such rules as may be made by the High Court, allow a petition to be presented before one year has elapsed since the date of marriage, on the ground that the case is one of exceptional hardship to the Appellant or of exceptional depravity on the part of the respondent. In this case, the petition under Section 13B was filed after one year had elapsed from the date of marriage

9. On or about 12th October 2021, the Appellant and the Respondent moved an application before the Family Court, seeking waiver of the six month waiting period under section 13B(2) of the Hindu Marriage Act, to make the motion for the Court to pass a decree of divorce.

10. By the order dated 12th October 2021, impugned before the High Court, the Family Court dismissed the application as devoid of merits and not maintainable. The case file was directed to be put up on 4th April 2022 for the purpose of recording statement on 2nd motion of the parties. The Family Court held:

"As per the guidelines laid down by the Hon'ble Supreme Court in case titled ***Amardeep Singh***

v. Harveen Kaur, 2017(4) RCR (Civil) 608 the case of the petitioners does not fall within the parameters fixed to waive off the stipulated period of six months as mentioned

under section 13B(2) of the Hindu Marriage Act. In the above mentioned case it has been clearly laid down that where the Court dealing with the matter is satisfied that a case is made out to waive the statutory period under section 13B(2) of the Hindu Marriage Act, it can do so after considering the following:

1) The statutory period of six months specified in Section 13B(20 in addition to the statutory period of one year under Section 13B of separation of parties is already over before the first motion itself.

2) .....

3) .....

4) ....

6. In the present case, the statement of first motion was recorded on 30.09.2021 and the parties are residing separately since 13.09.2020. Meaning thereby on the date of recording the statement of first motion, the period of separation of 18 months was not complete. The present case is not covered by the guidelines laid down by the Hon'ble Supreme Court in para no.19 of the judgment. In such circumstances, this Court cannot grant permission for waiving off the stipulated period of six months under section 13B(2) of the Hindu Marriage Act. The application is accordingly dismissed being devoid of merits and not maintainable. Now the file be put upon 04.04.2022 for the purpose already fixed i.e., for recording statement of second motion of the parties."

11. The Appellant filed a Civil Revisional Application under Article 227 of the Constitution of India, being CR 2527 2021 (O&M) in the High Court, challenging the aforesaid order dated 12th October 2021 passed by the Family Court.

12. The said Civil Revisional Application has been dismissed by the High Court, by the judgment and order impugned in this appeal. The High Court, inter alia, held:

"5. The judgment in Amardeep Singh (supra) is unambiguous. It lays down that the object of Section 13-B of the Act is to enable parties to dissolve a marriage by consent if it has broken down irretrievably. This would enable them to explore other options and to move on in life. A period of six months has been provided in Section 13B(2) of the Act to safeguard against a hurried decision. However, if a Court comes to the conclusion that there is no chance of a reunion, it should not be powerless to waive the statutory period of six months so that the parties may not be subjected to further agony. Thus, it has been held that six months statutory period prescribed is directory in nature. However, the power has been made subject to certain conditions which are reproduced below:

i) the statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(1) of separation of parties is already over before the first motion itself;

ii) ii) all efforts for mediation/conciliation including efforts in terms of Order XXXIIA Rule 3 CPC/Section 23(2) of the Act/section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties; iv) the waiting period will only prolong their agony.

5. A perusal of the aforementioned conditions shows that all of them are fulfilled except the condition of a period of 1 ½ years having elapsed before the first motion. Thus, the Family Court had no option but to dismiss the application filed for waiving the period of six months. In this view of the matter no error has been committed by it warranting any interference by this Court. The judgments in Jobanpreet Kaur (supra); Nav Raj Bhatta (supra) and Priyanka Chauhan (supra) cannot be relied upon even though in the said cases a period of 1 ½ years had not elapsed before the first motion for the reason that none of them have considered the issue of waiver being subject to period of 1 ½ years having elapsed before first motion.

6. In view of the above, the revision petition has no merit and is dismissed."

13. Section 13B(1) of the Hindu Marriage Act read with Section 13B(2) envisages a total waiting period of 1 ½ years from the date of separation to move the motion for a decree of divorce. The High Court correctly found that Section 13B (2) is directory, but rejected the Criminal Revisional Application with the observation that the Family Court had no option but to dismiss the application for waiving the waiting period of six months, since the condition of waiting for 1 ½ years from the date of separation for moving the motion for passing of a decree of divorce had not been fulfilled.

14. The provisions of the Hindu Marriage Act evince an inherent respect for the institution of marriage, which contemplates the sacramental union of a man and a woman for life. However, there may be circumstances in which it may not reasonably be possible for the parties to the marriage to live together as husband and wife.

15. The Hindu Marriage Act, therefore has provisions for annulment of marriage in specified circumstances, which apply to marriages which are not valid in the eye of law and provisions of judicial separation and dissolution of marriage by decree of divorce on grounds provided in Section 13(1) of the said Act, which apply to cases where it is not reasonably possible for the parties to a marriage to live together as husband and wife.

16. Section 13B incorporated in the Hindu Marriage Act with effect from 27.5.1976, which provides for divorce by mutual consent, is not intended to weaken the institution of marriage. Section 13B puts an end to collusive divorce proceedings between spouses, often undefended, but time consuming by reason of a rigmarole of procedures. Section 13B also enables the parties to a marriage to avoid and/or shorten unnecessary acrimonious litigation, where the marriage may have irretrievably broken down and both the spouses may have mutually decided to part. But for Section 13B, the defendant spouse would often be constrained to defend the litigation, not to save the marriage, but only to refute

prejudicial allegations, which if accepted by Court, might adversely affect the defendant spouse.

17. Legislature has, in its wisdom, enacted section 13B (2) of the Hindu Marriage Act to provide for a cooling period of six months from the date of filing of the divorce petition under Section 13B (1), in case the parties should change their mind and resolve their differences. After six months if the parties still wish to go ahead with the divorce, and make a motion, the Court has to grant a decree of divorce declaring the marriage dissolved with effect from the date of the decree, after making such enquiries as it considers fit.

18. The object of Section 13B(2) read with Section 14 is to save the institution of marriage, by preventing hasty dissolution of marriage. It is often said that “time is the best healer”. With passage of time, tempers cool down and anger dissipates. The waiting period gives the spouses time to forgive and forget. If the spouses have children, they may, after some time, think of the consequences of divorce on their children, and reconsider their decision to separate. Even otherwise, the cooling period gives the couple time to ponder and reflect and take a considered decision as to whether they should really put an end to the marriage for all time to come.

19. Where there is a chance of reconciliation, however slight, the cooling period of six months from the date of filing of the divorce petition should be enforced. However, if there is no possibility of reconciliation, it would be meaningless to prolong the agony of the parties to the marriage. Thus, if the marriage has broken down irretrievably, the spouses have been living apart for a long time, but not been able to reconcile their differences and have mutually decided to part, it is better to end the marriage, to enable both the spouses to move on with the life.

20. In ***Amardeep Singh v. Harveen Kaur, 2017 PLRonline 0009 , (2017) 8 SCC 746***, relied upon by the Family Court and the High Court, this Court held:

“19. Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B (2), it can do so after considering the following:

(i) The statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;

(ii) All efforts for mediation/conciliation including efforts in terms of Order 32 A Rule 3 CPC/Section 23(2) of the Act/section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) The parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

(iv) The waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.

20. Since we are of the view that the period mentioned in Section 13-B(2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."

21. The factors mentioned in ***Amardeep Singh v. Harveen Kaur*** (supra), in Paragraph 19 are illustrative and not exhaustive. These are factors which the Court is obliged to take note of. If all the four conditions mentioned above are fulfilled, the Court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13B (2) of the Marriage Act.

22. The Family Court, as well as the High Court, have misconstrued the judgment of this Court in ***Amardeep Singh v. Harveen Kaur*** (supra) and proceeded on the basis that this Court has held that the conditions specified in paragraph 19 of the said judgment, quoted hereinabove, are mandatory and that the statutory waiting period of six months under Section 13B (2) can only be waived if all the aforesaid conditions are fulfilled, including, in particular, the condition of separation of at least one and half year before making the motion for decree of divorce.

23. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. A judgment is not to be read in the manner of a statute and construed with pedantic rigidity. In ***Amardeep Singh v. Harveen Kaur*** (supra), this Court held that the statutory waiting period of at least six months mentioned in section 13B (2) of the Hindu Marriage Act was not mandatory but directory and that it would be open to the Court to exercise its discretion to waive the requirement of Section 13B(2), having regard to the facts and circumstances of the case, if there was no possibility of reconciliation between the spouses, and the waiting period would serve no purpose except to prolong their agony.

24. In ***Devinder Singh Narula v. Meenakshi Nangia, (2012) 8 SCC 580***, this Court observed:

"8. We have carefully considered the submissions made on behalf of the parties and have also considered our decision in Anil Kumar Jain case [***Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415 : (2009) 4 SCC (Civ) 226***]. It is no doubt true that the legislature had in its wisdom stipulated a cooling off period of six months from the date of filing of a petition for mutual divorce till such divorce is actually granted, with the intention that it would save the institution of marriage. It is also true that the intention of the legislature cannot be faulted with, but there may be occasions when in order to do complete justice to the parties it becomes necessary for this Court to invoke its powers under Article 142 in an irreconcilable situation. In fact, in ***Kiran v. Sharad Dutt*** [***Kiran v. Sharad Dutt, (2000) 10 SCC 243***] , which was considered in Anil Kumar Jain case [***Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415 : (2009) 4 SCC***

(Civ) 226], after living separately for many years and 11 years after initiating the proceedings under section 13 of the Hindu Marriage Act, the parties filed a joint application before this Court for leave to amend the divorce petition and to convert the same into a proceeding under Section 13-B of the Act. Treating the petition as one under Section 13-B of the aforesaid Act, this Court by invoking its powers under Article 142 of the Constitution granted a decree of mutual divorce at the stage of the SLP itself. In different cases, in different situations, this Court had invoked its powers under Article 142 of the Constitution in order to do complete justice between the parties."

25. In ***Soni Kumari v. Deepak Kumar, (2016) 16 SCC 346***, this Court exercised its power under Article 142 of the Constitution of India to waive the statutory waiting period of six months, where the wife had received the entire compensation of Rs.15 lacs in full and final settlement of her claims as per the settlement arrived at between the parties, and further granted a decree of divorce to the parties by mutual consent.

26. In ***Anil Kumar Jain v. Maya Jain, 2009 SCeJournal 3016, (2009) 10 SCC 415***, this Court held:

"29. In the ultimate analysis the aforesaid discussion throws up two propositions. The first proposition is that although irretrievable breakdown of marriage is not one of the grounds indicated whether under Section 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 where 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."

27. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under section 13B (2) of the Hindu Marriage Act, the Court would consider the following amongst other factors:

(i) the length of time for which the parties had been married;

(ii) how long the parties had stayed together as husband and wife;

(iii) the length of time the parties had been staying apart;

(iv) the length of time for which the litigation had been pending;

(v) whether there were any other proceedings between the parties;

(vi) whether there was any possibility of reconciliation;

(vii) whether there were any children born out of the wedlock;

(viii) whether the parties had freely, of their own accord, without any coercion or

pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.

28. In this Case, as observed above, the parties are both well-educated and highly placed government officers. They have been married for about 15 months. The marriage was a non - starter. Admittedly, the parties lived together only for three days, after which they have separated on account of irreconcilable differences. The parties have lived apart for the entire period of their marriage except three days. It is jointly stated by the parties that efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife. Even after over 14 months of separation, the parties still want to go ahead with the divorce. No useful purpose would be served by making the parties wait, except to prolong their agony.

29. The appeal is, therefore, allowed. The impugned order dated 17th November, 2021 passed by the High Court and the impugned order dated 12th October, 2021 passed by the Family Court, Hissar are set aside.

30. In the facts and circumstances of this case, this Court deems it appropriate to exercise its power under Article 142 of the Constitution of India, to grant the Appellant and the Respondent a decree

of divorce by mutual consent under section 13B of the Hindu Marriage Act, 1955, waiving the statutory waiting period of six months under Section 13(B) (2) of the said Act.

31. There will accordingly be a decree of divorce by mutual consent under section 13B of the Hindu Marriage Act, 1955 dissolving the marriage of the Appellant and the Respondent.

32. Pending Applications, if any, stand disposed of.