

Hindu Marriage Act, 1955, Section 13B(2) - Consent withdrawn - One of the parties withdrew the consent - Court held that marriage had irretrievably broken down and though the civil courts and the High Court could not exercise power contrary to the statutory provisions, Supreme Court under Article 142 could exercise such power in the interests of justice - Accordingly the decree for divorce was granted.

Hindu Marriage Act, 1955, Section 13-B – Whether a decree can be passed on a petition for mutual divorce under Section 13-B of the Hindu Marriage Act, 1955, when one of the petitioners withdraws consent to such decree prior to the passing of such decree – Respondent wife has made it very clear that she will not live with the petitioner, but, on the other hand, she is also not agreeable to a mutual divorce – In ordinary circumstances, the petitioner's remedy would lie in filing a separate petition before the Family Court under Section 13 of the Hindu Marriage Act, 1955, on the grounds available, but in the present case there are certain admitted facts which attract the provisions of Section 13-B thereof – Is a fit case where we may exercise the powers vested in us under Article 142 of the Constitution- Stand of the respondent wife that she wants to live separately from her husband but is not agreeable to a mutual divorce is not acceptable, since living separately is one of the grounds for grant of a mutual divorce and admittedly the parties are living separately for more than seven years – Appellant had transferred valuable property rights in favour of the respondent and it was after registration of such transfer of property that she withdrew her consent for divorce – She still continues to enjoy the property and insists on living separately from the husband – There will be a decree of divorce on the basis of the joint petition filed by the parties before the Second Additional District Judge, Chhindwara, under Section 13-B of the Hindu Marriage Act, 1955.

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