

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM (MAIN) NO.10/2010

Date of Decision: January 07, 2010

MUKESH ASHOK GUNDECHA & ANR. Petitioners

Through: Mr. T.P.S. Kang, Adv.
with Ms. Prerna Mehta,
Mr. M.M. Alam, Advocates.

versus

GOVT. OF NCT OF DELHI Respondent

Through: Mr. Shoaib Haider for
Mr. N. Waziri, Standing
Counsel.

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CORAM:

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Impugned in this petition is the order of the Additional District Judge, North-West dated 05.12.2009 whereby the application of the

petitioners seeking waiver of six months period for filing petition under Section 13 (B) (2) of Hindu Marriage Act (hereinafter referred to as 'Act') was dismissed.

2. Petitioners were married according to Hindu rites on 20.01.2003 at Maharashtra. A female child named Tanya was born from the wedlock of the parties on 25.09.2006. However, parties could not continue to live together because of temperamental disputes and started living separately since 18.05.2007. As marriage had irretrievably broke down, parties decided to dissolve their marriage by way of decree for divorce by mutual consent on terms and conditions contained in para 5 of the impugned order.
3. Petitioners filed a petition under Section 13 (B) (1) of the Act. The said petition was allowed vide order dated 16.11.2009. Subsequently, Petitioners filed application seeking waiver of six months period for

filing Second Motion Petition under Section 13 (b) (2) of the Act on 04.12.2009. The said application was dismissed by the trial Court on 05.12.2009 while relying upon '**Anil Kumar Jain vs. Maya Jain' II (2009) DMC 449 SC**'.

4. I find no infirmity or illegality in the impugned order of the trial court dated 05.12.2009.
5. Way back in the year 1990 the Apex Court in '**Smt. Sureshta Devi Vs. Om Prakash, (1991) 2 SCC 25**', has observed that the statutory period of six months required to be complied with before filing a petition under the said provision is a mandate in nature. The Supreme Court has observed:-

"13. From the analysis of the section, it will be apparent that the filing of the petition with mutual consent does not authorise the court to make a decree for divorce. There is a period of waiting from 6 to 18 months. This interregnum was obviously intended to give time and opportunity to the parties to reflect on their move and seek

advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The spouse may not be a party to the joint motion under sub-section (2). There is nothing in the section which prevents such course. The section does not provide that if there is a change of mind it should not be by one party alone, but by both. The High Courts of Bombay and Delhi have proceeded on the ground that the crucial time for giving mutual consent for divorce is the time of filing the petition and not the time when they subsequently move for divorce decree. This approach appears to be untenable. At the time of the petition by mutual consent, the parties are not unaware that their petition does not by itself snap marital ties. They know that they have to take a further step to snap marital ties. Sub-section (2) of Section 13-B is clear on this point. It provides that "on the motion of both the parties. ... if the petition is not withdrawn in the meantime, the court shall ... pass a decree of divorce ...". What is significant in this provision is that there should also be mutual consent when they move the court with a request to pass a decree of divorce. Secondly, the court

shall be satisfied about the bona fides and the consent of the parties. If there is no mutual consent at the time of the enquiry, the court gets no jurisdiction to make a decree for divorce. If the view is otherwise, the court could make an enquiry and pass a divorce decree even at the instance of one of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent.”

6. Since thereafter, ***Sureshta Devi's case*** is being followed by the Supreme Court in catena of judgments.
7. In ***Anil Kumar Jain's case (supra)*** also ***Sureshta Devi's case*** was considered by the Apex Court. While doing so, it was observed that it was only the Supreme Court who in exercise of its power under Article 142 of the Constitution of India can grant relief to the parties without waiting for the statutory period of six months stipulated under Section 13 (B) of the Act.
8. ***In 'Asmita Roy Choudhary vs. Ram Babu', CM***

(M) No.1299 of 2009', decided by me on 13th November, 2009, similar question was agitated and waiver of six months period was sought for filing a petition under Section 13 (B) (2) of the Act. While dismissing the petition, it was observed:-

“.....Thus, it is clear that petition for divorce by mutual consent has to be considered and treated on a different footing and the conditions precedent prescribed under these Sections must be satisfied before presentation of a petition seeking divorce under the said Section. No undue hardship or inconvenience or prejudice is caused to the parties by complying of the provisions contained in Section 13(B)(2) of the Act. The validity and constitutionality of the provisions contained in this Section has been repeatedly upheld by the Supreme Court in various cases.

The Court while interpreting the statutory provisions cannot add or subtract the words in the Section nor would it give meaning to the language of the Section, other, than what is intended on the plain reading of the provisions. Plain reading of sub-Section (2) of Section 13(B) of the Act makes it clear that parties are required to make a joint motion not earlier than six months after the date of presentation of the petition and not later than eighteen months after the

said date. This provision has been incorporated with a view to provide time to the Court to satisfy the genuineness of the claims in the petition, find out whether the consent was not obtained by force, fraud or undue influence. For that purpose, the Court is at liberty to make enquiry and may record the statements of the parties or hear them. If the Court is satisfied that the consent is voluntary, without any force, fraud or undue influence and that the parties have mutually agreed that the marriage should be dissolved, it must pass a decree for divorce under Section 13(B)(2) of the Act.”

9. Hence, I find no merits in the petition, the same is accordingly dismissed.

**(ARUNA SURESH)
JUDGE**

**JANUARY 07, 2010
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