

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.10.2015

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.R.P.PD.No.1978 of 2012

and

M.P.No.1 of 2012 and M.P.No.1 of 2015

Mrs. Brindha

... Petitioner

Versus

R. Ratish Kumar

...Respondent

Prayer: Revision petition is filed against the letter in Dis.No.535/2012, dated 27.4.2012 in H.M.O.P.No.2600 of 2010 on the file of the Principal Family Court, Chennai.

For Petitioner : Mr.M. Sriram

For Respondent : Ms.P.T. Asha

ORDER

Being aggrieved by the letter in Dis.No.535 of 2012 addressed to one Dr.N. Shaliini, by the learned Principal Judge, Family Court, Chennai, this revision is filed by the petitioner, who is the respondent in the matrimonial proceedings in H.M.O.P.No.2600 of 2010 after invoking the provisions of Article 227 of the Constitution of India.

2.Originally, the respondent herein being the

husband of the petitioner had filed a petition in H.M.O.P.No.645 of 2008 on the file of the Family Court, Coimbatore against the petitioner herein under Section 13(1-a) and 13(1-b) of the Hindu Marriage Act seeking the relief of divorce dissolving the marriage that took place between them on 2.7.2001 on the grounds of cruelty and desertion.

3. Thereafter, in pursuant to the order of this Court, dated 29.3.2010 and made in the Transfer C.M.P.NO.144 of 2009, the above said matrimonial proceedings was transferred to the file of the Principal Family Court, Chennai and re-numbered as H.M.O.P.No.2600 of 2010.

4. During the pendency of the proceedings, both the petitioner as well as the respondent were directed by the learned Principal Judge, Family Court, Chennai to undergo psychological evaluation and in this connection, the learned Principal Judge, Family Court, Chennai had addressed a letter to one Dr.N.Shalini, Psychiatrist in Dis.No.535 of 2012, dated 27.4.2012, requesting her to examine both the petitioner as well as the respondent thoroughly with reference to psychiatric as well as psycho diagnostic evaluation and to send a detailed report.

5. This letter alone has been challenged by the petitioner, in this revision petition.

6. When the revision petition came up for hearing on 25.9.2015, it was brought to the notice of this court by the learned counsels appearing on either side that both the revision petitioner as well as the respondent had expressed their willingness to settle their matrimonial dispute amicably out of court.

7. It is obvious to note here that as observed in the opening paragraph, this revision has been filed challenging the letter, dated 27.4.2012 addressed by the learned Principal Judge, Family Court, Chennai, to the psychiatrist Dr.N.Shalini.

8. Since the parties to the revision petition, according to the learned counsels for both sides, have expressed their willingness to settle their matrimonial dispute out of court, the statutory period of six months as contemplated under Section 13-B of the Act would be operating as a bar and therefore, both the learned counsels have suggested that the entire records relating to the matrimonial proceedings in H.M.O.P.No.2600 of 2010 on the file of the learned Principal Judge, Family Court, Chennai, might be ordered to be transferred to the file of this Court.

9. Based on the suggestions made by the learned counsels, the Principal Judge, Family Court, Chennai, was directed to transfer the entire records relating to

the matrimonial proceedings in H.M.O.P.No.2600 of 2010 to the file of this Court so as to give a quietus to the matrimonial dispute between the parties to the revision petition as they are also willing to settle their dispute amicably out of Court.

10.In pursuant to the direction of this Court, the learned Principal Judge, Family Court, Chennai has also transferred the entire records to the file of this Court.

11.After getting the records on transfer, the learned counsel for the petitioner has filed a miscellaneous petition under Section 151 of the Code of Civil Procedure to dispense with the statutory period of six months for filing the petition under Section 13-B of the Hindu Marriage Act (hereinafter it may be referred as 'the Act' wherever the context so requires).

12.In this connection, it is imperative on the part of this Court to extract the provisions of Section 13-B of the Act, which 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.]

13. Section 13-B was incorporated by way of an amendment to liberalise the process of divorce by simplified procedure and in less time so that rigour of unhappy marriage may come to an end parties may get rid of each other.

14. Sub-section (1) of Section 13-B stipulates that if the parties to the marriage are unable to live together for a period of one year or more and they have mutually agreed for divorce, they can file a joint petition for divorce in the District Court.

15. Sub-section (2) requires that after six months

of filing of joint petition of divorce and before eighteen months, the Court will pass decree for divorce after an enquiry of the contents of the petition. Six months' adjournment is mandatory so as to give an opportunity to the parties for reconciliation. But the divorce is a must and the Court has not discretion other way if the requirements of the section are complied with.

16.Sub-section (1) of Section 13-B imposes the following three conditions to file a petition under Section 13-B of the Act:-

a.The parties to the petition have been living separately for a period of one year.

b.

They have not been able to live together, and

c. They have mutually agreed that marriage should be dissolved.

17.It is also significant to note here that there is mandatory provisions under Section 13-B of the Act, 1955 that after a joint petition is presented before the Court for divorce on mutual consent, the parties are to be given at least six months' time for re-thinking over the matter so that solemnized marriage may not be broken down forever.

18. On coming to the instant case on hand, it is to be noted that as it is revealed from the averments of the affidavit filed before this Court in M.P.No.1 of 2015 that right from the year 2008, both the petitioner as well as the respondent have been living separately.

19. Keeping in view of this fact, this Court can safely conclude that the above three conditions have been fulfilled by the petitioner as well as the respondent. Further, the provisions of sub-section 2 of Section 13-B of the Act have also been satisfactorily complied with by the parties.

20. As observed in the foregoing paragraphs, admittedly, the petition in H.M.O.P.No.2600 of 2010 was pending before the Principal Family Court, Chennai, seeking the relief of divorce on the grounds of cruelty and desertion. Now that petition has been transferred to the file of this Court.

21. A miscellaneous petition in M.P.No.1 of 2015 has been filed before this court to dispense with the statutory period of six months for filing a petition under Section 13-B of the Act.

22. In this connection, the following three crucial questions are arisen for the consideration of this Court:

a. The petition under Section 13-B shall be filed before the District Court as it is having the original jurisdiction to entertain that petition as contemplated under sub-section '2' of Section 13-B of the Act. Under these circumstances, since the revision petition is pending before this Court, can a petition under Section 13-B of the Act straight away be filed before this Court as a miscellaneous petition?

b. Since this Court is an appellate Court whether a petition under Section 13-B of the Act can be filed before this Court?

c. Even if it is so, whether the statutory period of six months, which is mandatory in nature, can be dispensed with.

23. Obviously, M.P.No.1 of 2015 has been filed before this Court to dispense with the period of six months for filing the petition under Section 13-B of the Act.

24. In this connection, this Court would like to have reference to the decision of the Division Bench of the Karnataka High Court between **N. Vijaya Raghavan vs. K. Sharada (CDJ 2001 Kar HC 142)**.

25. In this case, the

applicant had filed a petition under Section 13(1) (i-a) of the Hindu Marriage Act, seeking a decree of divorce. That petition was dismissed by the Family Court on the ground that the petitioner was not entitled to the relief claimed. Hence, the petitioner being the husband had filed an appeal under Section 19 of the Family Courts Act, 1984 before the High Court.

26. During the pendency of the appeal, a joint petition under Section 13-B of the Act was filed as a miscellaneous application in Miscellaneous First Appeal No.5073 of 1999.

27. It was contended on behalf of the appellant that the High Court could pass a decree under Section 13-B of the Act. The learned counsel, who was argued on behalf of the appellant, has also made reference to the decision of the Karnataka High Court in **Roopa Reddy vs. Prabhakara Reddy reported in ILR 1993 Kant 2212.**

28. In the said decision, a Division Bench of the Karnataka High Court has opined that there is no condition that six months period should be strictly complied with.

29. Further, the Division Bench in the above cited decision, viz., **N.Vijaya Raghavan's case**, has entertained a doubt as to whether a joint petition under Section 13-B of the Hindu Marriage Act could be

filed as a miscellaneous application.

30.This question was answered by the Division Bench under the following terms:-

"The language of the section per se is very clear and it is a well settled principle of law that when the language of an enactment is very clear and is free from doubt and free from ambiguity, then the expression used in the Act should be given effect to. Section 13-B provides that such an application or joint petition for dissolution of marriage can be filed before the District Court. The expression is, "a petition for dissolution of marriage by a decree of divorce may be presented to the district Court by both the parties."

31.The Division Bench has also observed that the expression "District Court" has well been defined in Section 3 Clause (b) of the Hindu Marriage Act.

32.With this observation, the Division Bench of the Karnataka High Court has dismissed that application saying that the petition has wrongly been filed before that Court.

33.This Court also seeks the assistance of the decision of the Apex Court in **Rajesh Lakhotia vs. Smita Lakhotia (2001 SCC Online Cal 186)**.

34.In this case, an appeal was preferred against the judgment and order, dated 30.7.1999 passed by the Family Court Judge, Calcutta in Matrimonial Petition No.5 of 1996 dismissing the appellant's petition under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage with the respondent.

35.While the appeal was pending hearing, the parties had jointly filed an application under Section 13-B of the Act, praying inter alia, that the appeal be converted into a petition for divorce by mutual consent under Section 13-B of the above Act and that the waiting period of six months mentioned in sub-section (2) thereof be waived and a decree of divorce be immediately passed dissolving the marriage between the parties after taking on record the memorandum of compromise, dated 15.3.2001 jointly executed by them.

36.In this case, the following two questions were arisen for the consideration of the Apex Court

a. Whether the matrimonial proceedings under Section 13 of the Hindu Marriage Act, 1955 could be converted into one under Section 13-B of the said Act?

37.After considering the catena of

decisions, the Apex Court based on the decision in **Shashi Garg (Smt) vs. Arun Garg (AIR 1997 (7) SCC 565)** had answered that the petition under Section 13(1)(i-a) for dissolution of marriage could be converted into a proceedings under Section 13-B of the Act on being satisfied that dissolution of marriage by mutual consent could be granted on the basis of an agreement arrived at between the parties on account of the fact that the marriage was stated to be dead, both emotionally and practically. The Supreme Court has, in order to arrive at this conclusion, also made reference to the decision in **Radha vs. Mohinder Kumar (1998 (8) SCC 530)**

38. (b) The second question is regarding the waiver of six months waiting period as indicated in sub-section 2 of Section 13-B of the Act.

39. With reference to this question, the learned counsel, who was appearing on behalf of the appellant, while advancing his arguments has made reference to the Bench Decision of the Andhra Pradesh High Court in the case of **Omprakash vs. K. Nalini (AIR 1986 AP 167)**, wherein it was held that sub-section 2 of Section 13-B should be read as directory only.

40. It was also observed by that Court that the provisions contained in Section 13B(2) cautions the Court of its duty to try and save the marriage, but when the court

is fully satisfied that in the interest of justice, the marriage tie should be dissolved immediately, the powers of the Court could not be fettered in granting an instant declaration of divorce. 41. It was also observed that the time period fixed by Section 13B(2) did not apply to a proceeding before the appellate Court.

42.A

similar view had been taken by the Division Bench of the Karnataka High Court in the case of **Smt. Roopa Reddy vs. Prabhakar Reddy reported in AIR 1994 Kant page 12** and also by the Delhi High Court in the case of **Dhanjit Vadra vs. Smt. Beena Vadra reported in AIR 1990 Delhi 146.**

43. After having analysed the circumstances arisen out of that case, the Division Bench of the Hon'ble Apex Court in the above cited decision, viz., **Rajesh Lakhotia** has held that, "we see no difficulty in converting the instant proceedings, even at the appellate stage, from one under Section 13 of the Hindu Marriage Act, 1955 to one under Section 13-B of the said Act, and we direct accordingly."

44. In so far as the time stipulation fixed under sub-section 2 of Section 13-B of the Act is concerned, the Apex Court has observed that, "as to the petition of compromise filed by the parties jointly we are in agreement that the time period indicated in section 13-B(2) of the aforesaid Act,

will not apply at the appellate stage having regard to the fact that the waiting period as contemplated has already been undergone before the trial Court where it was evident that the marriage had broken down irretrievably and there was no possibility of the parties once again coming together to live as husband and wife and accordingly, the appeal was disposed of.

45. In ***Sanghamitra Ghosh vs. Kajal Kumar Ghosh ((2007) 2 SCC 220)*** also, while speaking on behalf of the Division Bench of the Apex Court, Hon'ble Mr. Justice Dalveer Bhandari, has observed that, "with a view to do complete justice between the parties, the Supreme Court, on being satisfied that marriage irretrievably broken down, can grant divorce decree by mutual consent in terms of the compromise between the parties set out in their petition.

46. His Lordship has also observed that, "where marriage has become totally dead and beyond hope of salvage, it is in public interest and in the interest of all concerned that court should grant decree of divorce.

47. On coming to the instant case on hand, it is revealed from the affidavit filed by the petitioner that the marriage between the petitioner and the

respondent was solemnised on 2.7.2001 at Padmavathi Kalyana Mandapam, Coimbatore. After seven years of their marriage, the marital tie was broken and they have been living separately from the year 2008 onwards. The petition in H.M.O.P.No.645 of 2008 was filed in the year 2008 before the Family Court, Coimbatore and thereafter, in view of the order of this Court, dated 29.3.2010 and made in the transfer C.M.P.No.144 of 2009, it was transferred to the Principal Family Court, Chennai, in the year 2010 and renumbered as H.M.O.P.No.2600 of 2010.

48.As observed by the Apex Court in **Rajesh Lakhotia vs. Smita Lakhotia (2001 SCC OnLine Cal 186)**, this Court is of view that the six months statutory waiting period as indicated in sub-section 2 of section 13-B, can be waived as it is only directory in nature and not mandatory.

49.Sub-section 2 of Section 13-B cautions the Court of its duty to try and save the marriage, but when the Court is fully satisfied that in the interest of justice the marriage tie should be dissolved immediately, the powers of the Court could not be fettered in granting an instant declaration of divorce.

50.As it is observed in the foregoing paragraphs, the parties to the revision petition have been living

separately from April 2007 as it is seen from the paragraph No.9 of the petition, which was filed under Section 13(1)(i-a) and (i-b) of the Act, i.e., more than eight years have passed since the petitioner had left her matrimonial home and had been staying away from the respondent/husband and there has been no reconciliation between them.

51.Under these circumstances, this Court finds it better to convert the matrimonial proceedings in H.M.O.P.No.2600 of 2010 into one as petition under Section 13-B of the Act. Therefore, the statutory waiting period of six months as contemplated under sub-section 2 of Section 13-B of the Act has been waived and the petition in M.P.No.1 of 2015 is allowed.

52.When the revision petition was taken up for hearing today, i.e., on 29.10.2015, a joint memorandum of compromise duly signed by the petitioner as well as the respondent was filed. The revision petitioner Mrs.Brindha and the respondent Mr.R.Ratish Kumar were present.

53.When the petitioner as well as the respondent were enquired about the fulfilment of the conditions set forth in the clauses 'a' to 'i', both of them have

represented that all the conditions have been fulfilled.

54. Now the respondent has handed over the documents as specified under sub clauses (i) and (ii) of Clause 'c'. The respondent has also handed over a demand draft for the value of Rs.40.00 lakhs drawn in favour of the revision petitioner as mentioned in Clause 'd'.

55. They have also expressed their mutual consent for getting dissolved their marriage solemnised on 2.7.2001 as the same has been irretrievably broken down.

56. The petitioner as well as the respondent have also submitted that they have no further claims against each other and requested that a consent decree of divorce on the basis of the memorandum of compromise might be passed.

57. Since all the claims and disputes between the parties to the revision petition have been fully and finally settled in terms of memorandum of compromise, they have agreed that they shall not pursue further any personal civil or criminal proceedings initiated by them against each other and that the same shall have to be withdrawn.

58. Accordingly, the matrimonial proceedings in H.M.O.P.No.2600 of 2010 has been converted as a petition under Section 13-B of the Act and a consent decree of divorce under Section 13-B of the Act is granted in favour of the parties to the petition dissolving their marriage solemnised on 2.7.2001 as the same has been irretrievably broken down.

59. The memorandum of compromise filed by the parties to the revision petition is taken on record and the same shall form part of the decree.

With the above observations, the revision petition is disposed of. M.P.No.1 of 2012 is closed. M.P.No.1 of 2015 is allowed. However, there will be no order as to costs.

rnb

29.10.2015

Index:Yes/No.
Internet:Yes/No.

T. MATHIVANAN, J.

RNB

To

The Principal Family Court, Chennai.

Note to office:-

Issue Order copy on 5.1.2016

Order in

C.R.P.PD.No.1978 of 2012
and
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