

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.983 of 2016

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the petitioners, who are husband and wife, is filed seeking directions to the learned Judge, Family Court-cum-IX Additional District Judge, East Godavari District, Rajahmundry for disposal of HMOP.No.67 of 2015.

2. I have heard the submissions of *Sri Vedula Venkata Ramana*, learned senior counsel for the petitioners. I have perused the material record.

3. The facts as borne out by the material record and as per the submissions of the learned senior counsel, in brief, are as follows:

The 1st petitioner is the husband of the 2nd petitioner. There was no consummation of marriage. On account of differences between them, they had started living separately since 08.12.2008. The 1st petitioner had originally filed against the 2nd petitioner, OP.No.1256 of 2011 under Section 13(1)(ia) (ib) of the Hindu Marriage Act, 1955 ('the Act', for brevity) on the file of the Additional Family Court, Hyderabad for grant of divorce. The said OP was transferred to the Family Court vide orders dated 20.04.2015 passed by the Supreme Court in

IA.No.1 of 2015 in Civil Appeal No.6721 of 2013. At the intervention of friends and relatives, both the parties had compromised the disputes between them and as per the terms of the compromise, this Court vide common orders dated 08.02.2016 passed in Crl.P.No.14814 of 2014 had quashed the proceedings against the 1st petitioner and others (accused 1 to 3) in CC.No.8 of 2014 on the file of the Court of the learned II Additional Judicial Magistrate of First Class, Kakinada. In view of the compromise, the original petition filed for divorce i.e., OP.no.1256 of 2011 was got amended and converted into a petition under Section 13-B of the Act to enable the parties to seek divorce by mutual consent by withdrawing adverse allegations made against one another. The 1st petitioner agreed to pay Rs.16,00,000/- to the 2nd petitioner towards full and final settlement of all her claims towards maintenance and permanent alimony and the 2nd petitioner has agreed to receive the same towards all her claims and towards full and final settlement. Rs.8,00,000/-, which is half of the aforementioned amount, was already paid by way of cash to the 2nd petitioner in the presence of a learned Judge of this Court during the pendency of the proceedings in Crl.P.No.14814 of 2014 and the remaining half is yet to be paid. In view of the understanding to obtain divorce by mutual consent, adverse allegations made in the pleadings of both parties in OP.No.1256 of 2011 were withdrawn and the 2nd petitioner had also admitted that she has already taken all her ornaments, jewellery and streedhana property and her belongings and that

she had stated that she has no claim of any nature whatsoever in respect thereof against the 1st petitioner and his parents. Having so agreed, the petitioners requested the Family Court to waive the period of six months, that is, the waiting period of six months as they have been living separately since 08.12.2008 and the proceedings for divorce are pending since 2011 and as they have compromised the matter and are now seeking divorce by mutual consent. However, the Court below had refused to entertain their request and waive the period of six months, which is a mandatory period of waiting.

4. The learned senior counsel while narrating the above chronology of events would submit that if the six months period is not waived, the parties would suffer serious and irreparable loss and that, therefore, it is, in the interests of justice to give appropriate directions to the court below to dispose of the petition as expeditiously as possible.

5. In the light of the facts and the submissions, the short question is whether a direction can be given to the Court below to dispose of the OP for dissolution of marriage by grant of divorce by mutual consent without insisting upon for the completion of the waiting period of six months.

6. Since the facts which are narrated supra are not in dispute, it is necessary to only reiterate that the spouses are living separately since 08.12.2008 and that the OP originally filed for divorce by the husband against the wife was pending since 2011 and that in that OP, the amendment sought for was

allowed and the original petition was converted into one for divorce by mutual consent. Though, the petition for divorce was originally filed under Section 13(1)(ia)(ib) of the Act, the parties are now seeking divorce by mutual consent by virtue of the compromise. In the well considered view of this court, the parties can be permitted to settle their dispute and seek divorce by mutual consent and the court below can grant to them a decree for divorce by mutual consent without the parties waiting for a further period of six months as they have been living separately for a period of one year or more since the filing of the Original Petition before the Family Court. The view of this court finds support from the ratio in the decision in **Devinder Singh Narula v. Meenakshi Nangia**^[1]. The facts of the cited case show that the marriage between the parties in that case was solemnized on 26.03.2011 and that within three months of the marriage one of the parties had filed a petition under Section 12 of the Act for a decree of nullity of marriage and that thereafter they had lived separately for more than one year and that there are no marital ties in effect between them and that in the above circumstances and during the pendency of the proceedings under Section 12 of the Act, the parties had agreed to mediation and agreed to dissolve their marriage by filing a petition under Section 13-B of the Act for grant of divorce by mutual consent and that in the proceedings before the mediator the parties had agreed to move appropriate petitions under the Act and that accordingly, a report was submitted by the mediator and subsequently the parties had filed a joint petition

on 13.04.2012 under Section 13-B of the Act and on that application, the learned Additional District Judge fixed a date for appearance of the parties on 15.10.2012 as the waiting period of six months contemplated under Section 13-B of the Act is required to be completed. In the above stated factual matrix of the case, the Supreme Court allowed the appeal of the parties and converted the petition pending under Section 12 of the Act before the Additional District Judge into one under Section 13-B of the Act and had granted a decree of mutual divorce between the parties and directed that the marriage between the parties shall be dissolved by mutual consent. Further in the decision in **Rakesh Harsukhbhai Parekh v. The State of Maharashtra**

and another^[2] the facts and ratio are as follows: - 'The marriage between the parties was performed on 20.05.2005. They had started living separately since 19.05.2006. The petitioner/husband had filed a petition under Section 13 of the Act on the ground of cruelty. After the matter was part-heard the parties withdrew the allegations against one another and had filed consent terms on 16.12.2009 with regard to granting of divorce and for withdrawal of the allegations and granting of lumpsum alimony to the wife. Thereafter they made a joint application for waiver of six months period for acting upon the consent terms and obtaining divorce by mutual consent under Section 13-B of the Act. Their application was rejected on the ground that the period cannot be waived and that the petition has to be adjourned to six months. While setting aside the order of the court below and while remitting the matter to the

family court to pass necessary orders under Section 13-B of the Act on the next date of hearing, the High Court of Bombay had held as follows: -

‘The parties, who settle their dispute, are not required to be penalised for settling their disputes. They have gone through the process of divorce in the Court for more than 6 months when the petition remained pending. They have only modified their views upon settlement of the dispute. Hence such a petition, though for divorce by mutual consent which would be granted to both parties and not for divorce upon the grounds under Section 13 of the Hindu Marriage Act, has lived through 6 months period in the Family Court already. Consequently, that period of 6 months, which the law requires the parties to undergo while the Petition remains pending, is undergone; only the acrimonious allegations are withdrawn so that the divorce can be granted amicably to both rather than to one of the spouses.’

7. I have carefully considered the facts and the submissions of the petitioners. Under Section 9 of the Family Courts Act, 1984 a duty is enjoined upon the court to consider the alternative mode of reconciliation between the parties; and reconciliation by way of amicable settlement of the dispute by divorce by mutual consent is arrived at by the parties in the case on hand. Even Section 89 of the Code of Civil Procedure, which applies to the Family Court, also enjoins the court with a duty to follow the method of resolution of the disputes by alternative mode. As also observed in the decision in **Rakesh Harsukhbhai Parekh** (2 supra), the parties in the present case, after the petition for divorce was filed by the husband, have lived separately for a period of more than six months and having seen reason had come to an understanding and have withdrawn the acrimonious allegations against one another so

that divorce can be granted amicably to both of them rather than to one of the spouses. In the case on hand, when the parties have withdrawn the spiteful and discordant allegations after an amicable settlement and are seeking divorce by mutual consent in terms of the compromise and when the parties have been living separately for more than the period of six months, in the well considered view of the court, the Family Court, which is required to function under the reconciliatory mode, shall permit the parties to have the matter settled amicably and shall dispose of the OP for grant of decree of divorce by dissolution of marriage by not insisting upon for completion of waiting period of six months where the waiting period had already elapsed during the pendency of the original proceedings in the Family Court.

8. In the result, the Civil Revision Petition is allowed and the learned Judge, Family Court, East Godavari at Rajahmundry is directed to dispose of the OP.67 of 2015 filed under Section 13-B of the Act as expeditiously as possible, preferably on a nearest next hearing date convenient to the Court and parties and by following the procedure established by law without insisting upon the requirement of completion of six months waiting period, as such a waiting period is already completed in the present case.

As a sequel, miscellaneous petitions pending, if any, in this revision shall also stand dismissed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

29th February 2016

Note: LR copy to be marked

(B/o)

Vjl

[\[1\]](#) AIR 2012 SC 2890

[\[2\]](#) AIR 2011 BOMBAY 34