

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.3753 of 2017

ORDER:

This civil revision petition arises out of an order passed by the learned Judge, Family Court, City Civil Court, Hyderabad, while entertaining FCOP.No.882 of 2017 filed by the petitioner and respondent herein under Section 13(B) of the Hindu Marriage Act, 1955 ('the Act', for brevity).

2. Be it noted that on the afore-said FCOP being presented, the learned Judge, Family Court, posted the matter to 22.01.2018 for the purpose of second motion as contemplated under Section 13(B) of the Act which is extracted herein-below for reference.

13-B. 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 solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 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 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petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the mean time, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized 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.

3. Learned counsel for the petitioner submits as follows: - 'Both the parties are willing for obtaining divorce by mutual consent. When the FCOP was filed, on 10.07.2017, for grant of divorce by mutual consent, the learned Judge of the Family Court posted the matter to 22.01.2018 for appearance of the parties as the parties are required to wait for a period of six months before the marriage is dissolved by a decree of divorce by mutual consent. The parties are living separately for the past 18 months. Despite the said fact and notwithstanding the request made by the parties, the learned Judge of the Family Court refused to waive the waiting period of six months. Therefore, the

posting of the FCOP, to 22.01.2018, by the learned Judge of the Family Court for appearance of the parties, that is, for the second motion, caused great hardship to the parties. The learned Judge of the Family Court failed to take into consideration the facts peculiar to the case. As there is an irretrievable breakdown of the marital bond, both the parties have amicably settled their disputes and agreed for obtaining a divorce by mutual consent. Further, the petitioner, who is the wife, got good score in an examination conducted by the Government of Australia. Therefore, she is likely to get admission as a permanent resident of Australia. Therefore, there is imminent necessity to obtain divorce by mutual consent at the earliest. Since both the parties are willing for granting a decree of divorce by mutual consent without waiting for the six months waiting period, the learned Judge of the Family Court ought to have considered their request and ought to have waived the period of six months waiting period and ought not to have posted the matter to 22.01.2018. Hence, this Court may be pleased to direct the learned Judge of the Family Court to advance the case from 22.01.2018 to any nearest date convenient to the said Court and permit the parties to admit the settlement and submit to the Court that they are unable to live together and grant them a decree of divorce by dissolving the marriage after making such enquiry as may be necessary in the matter.'

4. I have given earnest consideration to the facts and submissions.

5. A plain reading of the provision of law which is extracted supra reflects that the provision provides for a cooling period of six months on the first motion being moved in the event the parties changed their minds during the said period. Accordingly, after the initial motion and the presentation of the petition for mutual divorce, the parties are required to wait for a period of six months before the second motion can be moved and at that point of time if the parties have made up their minds that they would not be able to live together,

the Court, after making such enquiry as it may considers fit, grant a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree. Though on behalf of the petitioner it is urged that both the parties are willing to not to wait for the cooling period and they are agreeable for waiving the statutory period, the short question is as to whether this Court can waive the statutory period. As rightly contended by the learned counsel for the petitioner, so far as the Supreme Court is concerned, the Supreme Court can invoke Article 142 of the Constitution of India and allow the application for divorce by mutual consent by waiving the statutory period. Be that as it may. The present case is not a case where the litigation between the parties went on for more period than the period prescribed by the statute. Further, there are no peculiar and unusual facts for waiving the statutory period. As per settled law, only the Supreme Court in exercise of extra-ordinary powers under Article 142 of the Constitution can waive the waiting period of six months prescribed under Section 13(B) of the Act and pass a decree of divorce by mutual consent without asking the parties to wait for the statutory period of six months. Neither the civil Courts nor this Court can pass an order before the period prescribed under relevant provisions of the Act or on the grounds not provided for under Sections 13 and 13-B of the Act.

6. In view of the settled legal position, this Court is of the considered view that the request in the revision petition cannot be considered by this Court.

7. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

03.08.2017
Vjl