



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.02.2018

Coram :-

THE HON'BLE DR.JUSTICE S.VIMALA

and

THE HON'BLE MRS.JUSTICE T.KRISHNAVALLI

Civil Miscellaneous Appeal No.122 of 2018

A.Rathanavelpandian ... Petitioner/ Appellant

-vs-

K.Deepshikha ... Petitioner/Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 19 of the Famil Court Act to set aside the portion "the decree shall have an effect only on 02.08.2018" in the judgment and decree passed on 29.01.2018 in HMOP No.66/2017 on the file of the Family Court, Srivilliputhur and allow the Civil Miscellaneous Appeal.

For Appellant : Mr.T.Balaji

JUDGMENT

(Judgment of the Court was delivered by S.Vimala,J.,)

The judgment and decree passed by the Family Court, Srivilliputhur in HMOP No.66/2017 dated 29.01.2018, granting a decree for divorce under Section 13(B) of the Hindu Marriage Act (hereinafter referred to as 'the Act'), but postponing the effect of decree of divorce until 02.08.2018 is under challenge in this Civil Miscellaneous Appeal.

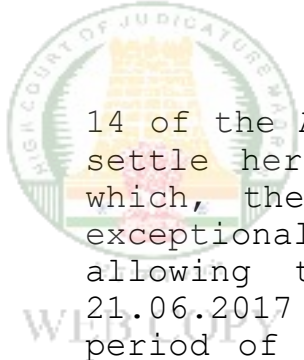
2. The facts in brief:

The first petitioner in the divorce petition is the wife and the 2nd petitioner/appellant herein/husband is the 2nd petitioner therein. The marriage between the couple took place on 01.02.2017. The marriage was sought to be dissolved. The application has been presented jointly by both of them as per the requirement of law. Before the matter was taken up for hearing, an application under Section 14 of the Act seeking permission to present the petition within a period of one year has been filed in I.A.No.109/2017 in HMOP No.66/2017.

3. The affidavit filed in support of the application is the joint affidavit of both the appellant and the respondent herein. In the application itself, it is made clear that there is no iota or probability for reunion or restitution.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The reason stated in the application filed under Section



14 of the Act is that the wife, who is a Ph.D., scholar, intends to settle her life abroad at the earliest. The circumstances, under which, the wife is placed is sought to be construed as causing exceptional hardship and therefore, leave must be granted by allowing the said application. The Court by the order dated 21.06.2017 has allowed the application dispensing with the waiting period of one year time. Thereafter, the petition for divorce has been taken on file on 21.06.2017 and it had been posted for hearing after the expiry of the cooling period of six months, as mandated under Section 13(B) (2) of the Act.

5. The enquiry for the second time was posted to 05.02.2018. By filing an application in IA No.209/2017, the couple wanted earlier hearing and it was allowed preponing the enquiry from 05.02.2018 to 27.12.2017. The Court granted the decree for divorce by the detailed judgment dated 29.01.2018. While granting the decree, as the saying goes, operation success, but patient died, the Family Court directed that the decree granting divorce shall have the effect only after 02.08.2018, though the decree dated 29.01.2018.

6. The learned counsel for the appellant would submit that,
 (a) when the couple wanted divorce by mutual consent at the earliest by seeking to dispense with the waiting period of one year (under Section 14 of the Act), the couple were able to convince the Court and they were successful in getting the application allowed ;
 (b) Even thereafter, the couple did not seek permission to dispense with the cooling period of six months, as contemplated under 13(B) (2) of the Act. Therefore, there is no justification for the Court to postpone the effect of the decree till 02.08.2018. The learned counsel would submit that on both these grounds, the clause in the decree postponing the effect of decree is liable to be set aside.

7. We have considered the submissions made by the learned counsel for the appellant.

8. Under normal circumstances, we would have chosen to issue notice to the respondent. But, here is a case, where nobody would have been inclined to challenge the decree of divorce by mutual consent except for the postponement of the effect of decree. In fact, when the wife herself has alleged before the Court that she is very much interested in getting the order of divorce at the earliest point of time, there is no purpose in ordering notice to the wife. Moreover, the issue to be decided more is on a question of law.

9. The perusal of the entire materials on record would go to show that when the application under Section 14(1) of the Act has been allowed and the decree for divorce having been granted after the expiry of six months period, the effect of postponing the decree beyond 02.08.2018 is clearly illegal and it is unwarranted and therefore, the clause postponing the decree has to be set aside.



10. While imposing the condition that the decree shall have an effect only after 02.08.2018, the Family Court has quoted the provisions of Section 14 of the Act. With regard to Section 14 of the Act, the observation of the trial Court judgment is as under:

"The section 14 of the Hindu Marriage Act empowers the Court to dissolve the marriage before the completion of the statutory conditions. It further empowers the Court to pronounce a decree subject to condition that the decree shall have an effect after the expiry of eighteen months from 01.02.2017. So, it is proper for the Court to dissolve the marriage by pronouncing a decree with condition that the decree for the relief of divorce on mutual consent shall not have effect on or before 2.8.2018 and the issue No.2 is answered accordingly."

11. This observation compels us to go through the provisions of Section 14 of the Act, under which, only when a permission is obtained either by misrepresentation or by concealment of the nature of the case, the benefit granted under Section 14 of the Act would not be made available. By any stretch of imagination, it cannot be said that the application under Section 14/13(B) of the Act was filed by misrepresentation or concealment of the nature of the case. Everything has been made crystal clear and nothing has been suppressed. Under such circumstances, the effect of postponing the decree invoking the assistance of Section 14 of the Act is clearly unsustainable. Therefore, it cannot be allowed to stand on record and it is ordered to be expunged.

12. In the result, in Paragraph No.10, the starting phrase "*Section 14 of the Hindu Marriage Act*" ending with "*issue No.2 is answered accordingly*" is ordered to be deleted, apart from the clause in Paragraph No.11, which states that "*The decree shall have an effect only after 02.08.2018.*"

13. This Civil Miscellaneous Appeal is allowed to the extent indicated above. No costs.

Sd/
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To:
The Family Court,
Srivilliputhur

+1cc to Mr.T.Balaji, Advocate, SR.No.51964

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