

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 153 of 2019**

- Smt. Sandhya Sen W/o Sanjay Sen Aged About 24 Years R/o Shakti Nagar, Street No. 1, Zone - 1, Behind Uttam Talkies Khursipar, Bhilai, District Durg Chhattisgarh.

---- Petitioner**Versus**

- Sanjay Sen S/o Shri Ramsajeevan Sen, Aged About 31 Years R/o Purani Basti, Under Bridge Road, Ward No. 37, Shahdol (M.P.)

---- Respondent

For Appellant

Mr. Avinash Chand Sahu, Advocate

**DB.: Hon'ble Mr. Justice Prashant Kumar Mishra
Hon'ble Mr. Justice N.K. Chandravanshi**

Order On Board by Prashant Kumar Mishra , J.

6/4/2021

1. Heard.
2. This is an appeal challenging the decree of judicial separation passed by the trial Court in Civil Suit No.198/2018 vide judgment dated 12.12.2018 in the proceedings for grant of mutual divorce under Section 13-B of the Hindu Marriage Act, 1955 (in short "the Act, 1955").
3. The parties were married at Durg on 20.2.2017. However, they remained together only for 2 days and thereafter, have never

lived as husband and wife. After one year of the marriage, they preferred a joint application dated 13.3.2018 for divorce by mutual consent. The application was signed, verified and supported by both the parties by filing their respective affidavits. They were examined before the trial Court after completion of 6 months cooling off period. In their deposition also, they stood by their decision to seek divorce by mutual consent, however, the trial Court has refused to pass a decree of divorce by mutual consent and has instead passed a decree for judicial separation for a period of one year.

4. The respondent has not entered appearance despite service of notice.
5. Learned counsel for the appellant submits that there being no defect in the application or in the procedure for moving such application for grant of divorce by mutual consent, the trial Court should have allowed the application.
6. We have heard learned counsel for the appellant and perused the record.
7. While granting a decree for judicial separation in place of a decree of divorce by mutual consent, the trial Court has referred to the provisions contained in Section 13-A of the Act, 1955, which provides that in any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-section (1) of

Section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.

8. The provisions contained in Section 13-A would attract only when the trial Court is satisfied "having regard to the circumstances of the case" that it considers it just to pass a decree for judicial separation instead of mutual divorce. The phrase "having regard to the circumstances of the case" requires the trial Court to find out the circumstances which compels it to pass a decree for judicial separation. Unless such circumstances exist, the trial Court is not entitled to pass a decree for judicial separation in a mechanical manner.
9. While passing the impugned decree, the trial Court has observed that the period of their staying together is so short that it is not possible that any serious dispute would have arisen between them. In our considered view, the trial Court has assumed that the dispute between them might not be of such intensity which would force them to seek divorce by mutual consent.
10. The provisions contained in Section 13-B of the Act, 1955 does not provide for existence of a ground like the ones contained in Section 13 for grant of divorce by mutual consent. There need not be a serious dispute between a married couple for seeking a divorce by mutual consent. It may happen in a given case that there is no quarrel or dispute between the couple but yet their

actions and behaviour are not compatible with each other for living a happy and peaceful married life, therefore, they may seek divorce by mutual consent. If an application is otherwise duly constituted and properly presented before the Court, it is not for the Court to search for a ground or a reason, which has compelled the parties to seek divorce by mutual consent.

11. Having regard to the fact that the parties presented the application under Section 13-B by appearing before the trial Court on 13.3.2018 and thereafter, again appeared on 7.4.2018, 27.10.2018, 4.12.2018 and 12.12.2018, the trial Court should have passed the decree of divorce by mutual consent instead of decree for judicial separation.

12. Therefore, we allow the appeal, set-aside the impugned decree of judicial separation and instead pass a decree of divorce by mutual consent.

13. Accordingly, the marriage between the parties solemnized on 20.2.2017 is dissolved by a decree of divorce by mutual consent. A decree be drawn accordingly.

14. The parties shall bear their own costs.

Sd/-

(Prashant Kumar Mishra)

Judge

Sd/-

(N.K. Chandravanshi)

Judge

HEAD NOTE

- Existence of serious dispute between husband and wife is not prerequisite for grant of divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955.
- Judicial separation, instead of divorce by mutual consent, cannot be granted in a mechanical manner.