

(2013) 12 DEL CK 0001
In the Delhi High Court
Case No : CM (M) 1347 of 2013

In Re.: Gaurav Kapoor and Komal Babbar

Date of Decision : 13-12-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Constitution of India, 1950 — Article 227

Citation : (2014) 4 AD 597 : (2014) 206 DLT 637 : (2014) 1 DMC 305

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Pulkit Gupta and Mr. Amit Bhagat, for the Appellant;

Final Decision : Disposed Off

Judgement

Manmohan Singh, J.

CM No. 19991/2013

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM(M) 1347/2013

1. The petitioners Gaurav Kapoor and Ms. Komal Babbar have filed the present petition under Article 227 of the Constitution of India, inter alia, seeking quashing/setting aside the order dated 25th November, 2013 passed by the learned Additional District Judge, Tis Hazari Courts, Delhi, in HMA No. 652/2013. The brief facts of the matter are that the marriage of the petitioner No. 1 and petitioner No. 2 was solemnized on 20th June, 2010. In August, 2012 due to temperamental differences and incompatibility, they stopped living together as husband and wife. In June 2013, the petitioner No. 2 returned to her parents' house in New Delhi. In September 2013, the petitioners filed a joint petition for dissolution of marriage by a decree of divorce by mutual consent u/s 13B(1) of the Hindu Marriage Act, 1956 before the learned District Judge, Tis Hazari Courts.

2. On 30th September, 2013, the said petition came up before the learned trial

court who observed that as the parties were living separately since June, 2013, therefore, the statutory period of one year of separation has not expired on the date of filing of the petition and would elapse only in June 2014. Therefore, the petition filed by both the petitioners, being HMA 652/2013, was adjourned to 1st July, 2014.

3. Thereafter, the petitioners filed an application u/s 114 read with Order XLVII CPC for review of order dated 30th September, 2013. However, by impugned order dated 25th November, 2013, the learned trial court dismissed the review application. The following are reasons given by the learned trial court while dismissing the review application:

After hearing arguments and on the perusal of the material on the record reveals that in para IV of the petition, it is mentioned that

it is pertinent to mention herein that the parties to the present petition had stopped living together as husband and wife since the beginning of the month of August, 2012 and it was merely the physical separation which took place in the month of June, 2013

The averments that the parties to the petition had stopped living together as husband and wife, since beginning of month of August, 2012 is a very vague term as the petition is silent about how the parties to the petition had stopped living together as husband and wife, on what address they were residing at that time or whether they were residing with other family members or whether they were residing in one room under same roof.

The party to the petition has even categorically also mention that it was merely the physical separation which took place in the month of June, 2013. Section 13-B of HMA categorically ruled that

the petition for dissolution of marriage or 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; 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.

Meaning-therby the Act has categorically ruled that the parties must be living separately for the period of one year or more but in the present petition there is an averment that the parties to the present petition has stopped living as husband and wife since the beginning of the month of August, 2012 and it was merely the physical separation which took place in the month of June, 2013. Hence, one year of separation will complete on June, 2014 and this petition is to be considered on 01.07.2014 only.

4. I have heard the learned counsel for the petitioners and have also gone through the petition for dissolution of marriage. In para 4 of the petition, it is specifically mentioned that both had stopped living together as husband and wife

since beginning of the month of August 2012 and it was merely the physical separation which took place in the month of June, 2013. The learned trial court as a matter of fact has taken the view that since physical separation took place in the month of June, 2013, therefore, the petition was adjourned for record the first motion in July, 2014.

5. The learned trial court did not consider the factual position of the matter where the specific statement was made that they had stopped living together as husband and wife since August, 2012. The similar question came up before the Apex Court in the case of Smt. Sureshta Devi Vs. Om Prakash, . In para 9 of the said judgment, it was observed:

9. The "living separately" for a period of one year should be immediately preceding the presentation of the petition. It is necessary that immediately preceding the presentation of petition, the parties must have been living separately. The expression "living separately" connotes to our mind not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof by force of circumstances, and yet they may not be living as husband and wife. The parties may be living in different houses and yet they have no desire to perform marital obligations and with that mental attitude they have been living separately for a period of one year immediately preceding the presentation of the petition. The second requirement that they "have not been able to live together" seems to indicate the concept of broken down marriage and it would not be possible to reconcile themselves. The third requirement is that they have mutually agreed that the marriage should be dissolved.

6. It appears from the said decision that the expression "living separately" has been discussed and ultimately the Apex Court came to the conclusion that period of one year has to be counted from the time when the husband and wife have no desire to perform marital obligations and with that attitude they have been living separately.

7. In the present case, apparently the specific statement was made by the petitioners that they had stopped living together as husband and wife since the beginning of month of August, 2012. Nothing contrary is available on record. The petitioners filed a joint petition for dissolution of marriage by a decree of divorce by mutual consent u/s 13-B(1) of the Hindu Marriage Act, 1956 after expiry of one year.

8. No doubt, it was also mentioned in the petition that physical separation took place in the month of June, 2013 when the petitioner No. 2 returned to her parents' house in Delhi. Relevant date is August, 2012 which is to be treated and considered as no desire to perform marital obligation. On the face of it, the decision passed by the Supreme Court is directly applicable to the facts and circumstances of the present case. The impugned order is therefore not sustainable and the same is quashed. The parties shall appear before the learned

trial court on 16th January, 2014 when their prayer for recording the First Motion for dissolution of marriage by a decree of divorce by mutual consent u/s 13-B(1) of the Hindu Marriage Act, 1956 will be considered by the learned trial court. No further orders are required to be passed in the present petition. The same is accordingly disposed of.