

(2000) 12 KAR CK 0034
In the Karnataka High Court
Case No : Writ Petition No. 34990 of 2000

K. Sanjay and Another

APPELLANT

Vs

Principal Judge, Family Court

RESPONDENT

Date of Decision : 08-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Hindu Marriage Act, 1955 — Section 13 B, 13 B (2)

Citation : (2001) 2 DMC 132 : (2001) ILR (Kar) 1510 : (2001) 3 RCR(Civil) 509

Hon'ble Judges : Tirath Singh Thakur, J

Bench : Single Bench

Advocate : S. Krishnaswamy, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Tirath Singh Thakur, J.—Principal Judge, Family Court, Bangalore has by an order dated 19th of October, 2000 declined to cut short the six months period prescribed by Section 13(B)(2) of the Hindu Marriage Act and take up the petition for divorce by mutual consent for immediate orders. Aggrieved, the petitioners have filed the present writ petition seeking a mandamus directing the Court below to dispose of the matter expeditiously.

2. The petitioners are husband and wife who got married to each other in May, 1994. Having lived together till June, 1997, they appear to have separated on account of what they call "temperamental incompatibility". Two years later, they filed a petition before the Family Court at Bangalore u/s 13(B) of the Hindu Marriage Act seeking a decree for divorce by mutual consent. Sub-section (2) of Section 13(B) provides that a motion for any such decree cannot be made earlier than six months from the date of the presentation of the petition. Undeterred, the petitioners filed I.A. III before the Court below for immediate orders dispensing with the statutory requirement of six months waiting period. This request was considered, but declined by the Family Court in terms of the order referred to earlier. The Court was of the view that the petitioners had not made

out a case for dispensing with the statutory period prescribed for the making of a motion for a decree.

3. Learned Counsel for the petitioners argued that the period prescribed by Section 13(B)(2) for the making of the motion was not mandatory and that the Family Court could in appropriate cases permit a motion even in anticipation of the expiry of the statutory period. In support, he relied upon a decision of this Court in *Smt. Roopa Reddy Vs. Prabhakar Reddy*, . Reliance was also placed upon *Dhanjit Vadra Vs. Smt. Beena Vadra*, , and *K. Omprakash Vs. K. Nalini*, . Support was borrowed by the learned Counsel from the decision of the Supreme Court in *Smt. Sureshta Devi v. Omprakash*, , for his contention that even if the couple was living under the same roof by force of circumstances, they need not be living as husband and wife and can, therefore, be treated as living separately. What was necessary in such situations was whether they had no desire to perform their marital obligations and had with that mental attitude been living separately for a period of one year immediately before the presentation of the petition. The judgment of the Apex Court in *Ashok Hurra Vs. Rupa Bipin Zaveri*, , was called in aid to canvass that where the marriage between the parties had irretrievably broken, the Court could grant a decree without waiting for the six months period prescribed u/s 13(B)(2). It was argued that the very fact that the parties had lived separately for the past two years signified an irretrievably break down of the wedlock making any effort at reunion between the two, futile and any hope of their coming together to spend their life nothing but an illusion. The Trial Court did not, according to the petitioners, appreciate the fact situation properly and erred in not taking up the matter for hearing and orders immediately. The fact that both the parties were highly educated and economically independent was, according to the learned Counsel, sufficient to show that decision to undo the wedlock was not a decision taken without due deliberation, care and caution.

4. Section 13(B) introduced by the Marriage Laws Amendment Act, 1976 for the first time permitted dissolution of Hindu marriage by mutual consent. The provision marks a departure from the age old belief that a Hindu marriage is a sacrament and not a contract that may be undone even if the parties want to do so. The provision however provides certain inbuilt safeguards to ensure that marriages are not dissolved for reasons that are flimsy or based on decisions taken without cool thought. Sub-section (2) of Section 13(B), therefore, stipulates that a motion for the passing of a decree by mutual consent cannot be made within six months from the date the petition is presented. The question whether the said requirement was mandatory in nature had to arise rather inevitably as it did in cases, some of which have been relied upon by learned Counsel for the petitioners. The decisions favour the view that the six months period prescribed by Section 13(B)(2) is not a mandatory requirement for a Court to pass a decree by mutual consent. Two main reasons lie at the bottom of that view. The first and the foremost is the profound change which Section 13(B) has brought about in the concept that Hindu marriage is a sacrament. The law after the introduction of Section 13(B) no longer requires the parties to a

marriage to suffer each other even when both of them agree that their marriage is all but over. It relieves them of the burden of servitude to the belief that the so-called sacrament is beyond dissolution by the act of the parties or the intervention of any agency lesser than divine. The second reason is that the period prescribed in Sub-section (2) is not a requirement, which touches upon the jurisdiction of the Court to entertain a petition or to take up the same for final hearing even before the expiry of the period statutorily prescribed. The provision is more procedural than substantive in its content and hence should be understood in that spirit. The anomalies that may arise out of the failure of the Court to pass a decree within 18 months from the date of the filing of the petition also supports the view that the provision was directory and should be understood to be so to prevent miscarriage of justice. The directory nature of the provision cannot, therefore, be doubted. This would imply that a Court seized of a petition for divorce can in appropriate cases entertain a motion for the grant of a decree even in anticipation of the expiry of the statutory period of six months prescribed under Sub-section (2) of Section 13(B).

5. The next question then is whether the discretion vested in the Court below to entertain such a motion even before the expiry of the statutory period has been properly exercised with present case and whether this Court should interfere with the view taken by it in the present writ proceedings. Now, it is fairly well-settled that the writ jurisdiction exercised by the High Court under Article 226 is discretionary and that the Court need not invoke that jurisdiction just because it is lawful to do so. It is equally well-settled that the Writ Courts do not ordinarily exercise this extraordinary jurisdiction to interfere with the exercise of discretion by the lower Courts. Orders rejecting applications for expeditious hearing, refusing further cross-examination, condoning delays and those passed under Section 151 are rarely interfered with by the Writ Courts discretion however like any other power is not an unruly horse and cannot be exercised arbitrarily or for extraneous considerations. The wider the discretion the more careful has its exercise to be. Instances are not, therefore, wanting, where the Courts have interfered with discretionary orders if it is found that its exercise was not judicial or was vitiated by any other similar infirmity. Suffice it to say that an order passed by the Court below even when it is an interlocutory order and one in its discretion is not immune from correction. The pre-requisite for any interference however is a demonstrable failure of justice resulting from a palpably arbitrary exercise of the discretion. Stated differently, the order passed by the Court below ought to be so unreasonable or outrageous as no reasonable person could countenance the same. Just because two views are possible on a given issue that fell for consideration before the Court would not by itself justify reversal of the view taken by the Court below. That is because a Court exercising jurisdiction under Article 226 is not an Appellate Court, where a second opinion on an issue may itself constitute a sufficient ground for interference. :

6. Coming then to the order in the present case, I see no irrationality or arbitrariness in the view taken by the Family Court to call for interference with

the same. The Court below is of the opinion that the parties have lived together as husband and wife till the year 1997. It has also drawn a distinction between the fact situation that existed in the decision relied upon by the petitioners and that of the case in hand. The Courts anxiety appears to be to save the marriage by deferring consideration of the motion. The Court did not apparently see any irretrievable break down in the marital ties between the parties. Living separately for two years was not a circumstance that would make reunion a distant dream nor could the educational background and financial independence of the parties be a guarantee against their decision to part being hasty and impulsive. There is, in my opinion, no irrationality or perversity in that line of reasoning. No additional circumstances, facts Or urgency calling for immediate orders on the petition for divorce were pointed out by the petitioners in these proceedings. The order passed by the Court below need not, therefore, be interfered with.

7. The writ petition fails and is accordingly dismissed.