
(1986) 08 BOM CK 0040

In the Bombay High Court

Case No : Civil Revision Application No. 586 of 1986

Nisha Chandrashekhar Khobragade

APPELLANT

Vs

Chandrashekhar Gopichand Khobragade

RESPONDENT

Date of Decision : 26-08-1986

Acts Referred:

Hindu Marriage Act, 1955 — Section 10(1), 13, 13(1), 13A, 13B

Citation : (1986) 3 BomCR 742 : (1987) MhLj 63

Hon'ble Judges : M.S. Deshpande, J

Bench : Single Bench

Advocate : M.G. Bhangade, for the Appellant; J.N. Chandurkar, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Deshpande, J.—This revision application is directed against the order passed by the trial Court, refusing to record a compromise between the parties because it did not come within the provisions of section 13-B of the Hindu Marriage Act.

2. The present applicant-wife had filed a petition u/s 13(1)(i)(a) of the Hindu Marriage Act for a decree of divorce on the ground of cruelty. The husband-present respondent also filed a petition u/s 13(1) of the Hindu Marriage Act for a decree of divorce on the ground that the wife had treated him with cruelty.

3. On 12th March, 1986, the parties filed an application stating that without going into the correctness or otherwise of the allegations made by either of them, it was evident that the marriage had irretrievably broken down and they cannot live under one roof and so the marriage should be dissolved by a decree of divorce. Without prejudice to the wife's claim for alimony pendente lite or permanent, the trial Court held that the application was not one which could be entertained u/s 13-B of the Hindu Marriage Act and rejected the application.

4. Shri Bhangade, the learned Counsel for the applicant urged that in view of the provision of section 13-B of the Hindu Marriage Act, a decree of divorce by

mutual consent could be passed. Section 13-B reads as follows :---

"13-B. (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.

(9) On the motion of both the parties made not 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."

It is apparent that this section as well as section 13-A were inserted by section 8 of Act 68 of 1976. Shri Bhangade urged that the question of absence of collusion which was a requirement which has to be established before recourse can be had to the provisions of section 13 of the Act, would not be relevant because the relief which the parties sought, can be granted by resorting to the provisions of section 13-B of the Act. Section 13 of the Hindu Marriage Act enumerates the grounds on which a decree for divorce can be granted and u/s 10(1) of the Act a petition for a decree may be presented on the same grounds as specified u/s 13(1). It is, therefore, clear that whether it is a decree for divorce or for judicial separation, it is necessary to make out one of the grounds specified u/s 13(1). Section 13-A which has been added by the amendment, does not so enlarge the powers of the Court as to grant a decree for judicial separation irrespective of the provisions of section 13(1), but vests only a discretion in the Court to grant the alternative and lesser relief of judicial separation in a petition for divorce provided the requisite ground contemplated by section 13 of the Act has been established.

5. In the present case, the two petitions before the trial Court did not reach the stage of trial and when the application for recording the compromise was made on March 12, 1986, none of the grounds on which a decree of divorce could be granted had been established. There is no dispute about this position and Shri Bhangade, in fact, stated that since the application was one u/s 13-B, it was not necessary to consider any of the grounds which would be relevant u/s 13 of the Hindu Marriage Act. Section 13-B which is a distinct provision provides for the manner in which the Court has to be approached for obtaining divorce by mutual consent, one of the essential requirements being the presentation of the petitioner for dissolution of marriage by a decree of divorce, by both the parties to a marriage together, on the ground that they had been living separately for a period of one year or more and have not been able to live together and they

have mutually agreed that the marriage should be dissolved. Sub-section (1) of section 13-B lays down the procedure to be followed upon such a petition being presented and the conditions which have to be satisfied before a decree for dissolution can be passed. This includes inter alia the satisfaction of the Court after hearing the parties and after making such enquiry as it thinks fit, that a marriage has been solemnized and the averments in the petition are true. Section 13-B clearly does not enable the parties to get a decree of divorce merely for the asking. The principle that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all and that the other method of performance are necessarily forbidden is well settled and was applied by the Privy Council in AIR 1936 253 (Privy Council) and State of Uttar Pradesh Vs. Singhara Singh and Others, while considering the provision of section 164, Criminal Procedure Code. Sub-section (1) of section 13-B Hindu Marriage Act prescribes the manner in which the District Court has to be approached and provides the ground for obtaining divorce sub-section (2) prescribes the procedure as to how the Court should proceed and the time limit within which the withdrawal of the petition may be permitted. Evidently the power could be exercised only in the manner provided and no other.

6. In the present case, none of the mandatory requirements of section 13-B have been observed except that the application styled as one for recording the compromise was signed by both the parties. Shri Bhangade urged that substance should not be sacrificed for mere form and the form should not be insisted upon, when the Court after taking a liberal view of the provisions can grant the relief. Now the manner in which the petitions under the Act have to be presented has been prescribed by sections 19 to 21 of the Act. Section 19 provides that Court to which the petition shall be presented and which would have the jurisdiction to entertain it, while section 20 provides as follows :--

"(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded (and, except in a petition u/s 11, shall also state) that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, referred to as evidence."

Under the section 21, subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, the Code of Civil Procedure, 1908. It cannot be said in the teeth of this provisions that the presentation of a petition as envisaged by section 13-B is a matter of mere form. The petition for dissolution of marriage has to answer the requirement of sections 20 and 21 of the Act. Shri Bhangade relied on Indrawal Vs. Radhey Raman and Another, In that case there were findings in favour of the husband on grounds of adultery, cruelty and desertion and the trial Court had dissolved the marriage by a decree

of divorce. When the matter came up before the High Court the appellant wife stated plainly that she did not want to live with the man wanted divorce and that she was aggrieved by the findings recorded against her by the trial Court. On this the husband was prepared not to press the allegations provided the decree for divorce was not disturbed and the wife, on her part, withdrew the allegations made by her against him. The result was that both the parties were agreed that the marriage between them should be dissolved. In this context that the learned Judge observed that there did not appear to be any collusion between the parties and the policy of the law having undergone a change after the Marriage Laws (Amendment) Act, 1976, it is possible now to dissolve a marriage by agreement between the parties although none of the grounds, on which a marriage may be dissolved by a Court, be found to exist. It could not, therefore, be said that the compromise was in any manner unlawful being thus satisfied that the parties have adjusted the dispute between them by a lawful compromise, it was directed to be recorded and the appeal was dismissed. The learned trial Judge very correctly held that there is nothing in this ruling which would apply to the facts before him. A reference was also made on behalf of the applicant to Santosh Kumari Vs. Virendra Kumar, There the parties, were Hindus by caste and after their marriage on 16-2-1975, they lived together till 15-10-1979 and a daughter was born on 20-5-1978. The husband filed an application u/s 13 of the Hindu Marriage Act and it was contested by the wife. The fact of the marriage and the birth of the daughter were admitted but the facts of cruelty and desertion were denied. An effort was made after the framing of the issues for reconciliation but the husband was not willing to take the wife back. On 13-8-1984, the parties appeared before the District Judge and moved that they were desirous for dissolution of marriage by mutual consent and, therefore, the matter may be taken up on that very day. Another application purporting to be u/s 13-B of the Act was also jointly filed by the parties on that day and it was stated therein that the parties had been living separate since 15-10-1979 and it had not been possible for them to live together, and the decree of dissolution of marriage was in the interest of both. The District Judge's efforts to bring about a reconciliation, did not succeed and upon the insistence of the parties that the earlier application should be treated as a joint application with mutual consent for grant of decree of divorce, the District Judge accepted the pray and passed a decree for dissolution of marriage. The learned Judge of the Rajasthan High Court took the view that when the parties requested the Court to treat the compromise application for grant of decree for divorce by mutual consent, they must be deemed to have asked for an amendment of the application and when the Court acted upon it, it must be deemed to have allowed the amendment. The second objection before the High Court was about not making the motion as required by section 13-B and this contention was overruled by the learned Judge. It is apparent that there also it was not said that the provisions of section 13-B do not have to be complied with. Shri Bhangade, however, referred to the observations in para 11 of the judgment that when it appears to the satisfaction of the Court that it is impossible for the parties to live together and a decree for divorce by

mutual consent would be in the interest of both of them, it been not attached undue importance to the form of the application or the time within which it has been made, as was clear from the authorities to which a reference was made there. The position, in substance however was that the Court proceeded on the basis that section 13-B of the Hindu Marriage Act had been substantially complied with. Having regard to all these factors, no exception can be taken to the order passed by the learned trial Judge.

7. In the result, the revision application is dismissed, but there will be no order as to costs.