

(2008) 02 BOM CK 0119
In the Bombay High Court
Case No : Writ Petition No. 431 of 2006

Savitri Subba and Another

APPELLANT

Vs

The Principal Judge, Family Court

RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 13(1), 13B, 13B(2)
Penal Code, 1860 (IPC) — Section 498

Citation : (2008) 6 ALLMR 295 : (2008) 5 MhLj 400

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : A.K. Bhangde, for the Appellant; Anup Parihar, AGP, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—The petitioners before this Court are husband and wife and they are challenging the order dated 13-1-2006 passed by the Principal Judge, Family Court, Nagpur, rejecting their request to waive prescribed period of six months u/s 13B of Hindu Marriage Act, 1955, and to consider their application for grant of divorce by mutual consent immediately.

2. The petitioner No. 1 - wife is stated to be 24 years old while petitioner No. 2 - husband is stated to be 28 years of old. Both of them performed their marriage at Arya Samaj, Hansapuri at Nagpur on 7-12-2004 according to Hindu religion and ceremonies. It is stated that said marriage is love marriage. The parties state that they are living separately since 10-12-2004 when they decided to live separately. It is the contention that in recent past they realised that their likings, tastes of life, temperaments, ideas, ideologies, thinking, attitudes, aptitudes, intellectual reactions, capacities, feelings, moods, habits, nature and life are so different from each other that it would not be possible for them to hit it off together in future. It is to be noted that parties have lived together hardly for

three days. The details where and how they lived together are not on record. Immediately after expiry of one year i.e. on 23-12-2005, application for divorce by mutual consent u/s 13B of Hindu Marriage Act, 1955, came to be filed and a request was made to the Family Court to exempt them from requirement of waiting for prescribed period. In the said application, which is moved on 23-12-2005, it is stated that parents of petitioner No. 1 - wife have decided to solemnized her marriage on 15-2-2006 and petitioner No. 2 - husband has also no objection for said marriage. It is further stated that there is no possibility of revival of marriage.

3. The Family Court heard the arguments at length and thereafter appreciated all cases cited before it by the advocate appearing for the husband and wife. It examined the facts in the light of judgment of Delhi High Court in the case of In Re: Ms. Anita Sharma and Shri Harish Kumar Sharma, and also found that final word on the issue is judgment of the Hon''ble Apex Court in the case of Smt. Sureshta Devi Vs. Om Prakash, . It held that the Court will have to wait for period of six months and it has no jurisdiction to try and decide the petition before the statutory period and it therefore rejected the application moved by the parties in this respect.

4. I have heard Shri Bhangde, learned Counsel for the petitioners and Shri Parihar, learned AGP for the respondent.

5. Shri Bhangde, learned Counsel for the petitioners has contended that the Family Court has acted under the misconceived notion that it has no jurisdiction to try application for divorce by mutual consent before the expiry of prescribed period of six months. He places reliance upon the judgment of the Delhi High Court in the case of Dhanjit Vadra Vs. Smt. Beena Vadra, , Grandhi Venkata Chitti Abbai and another, , in In Re: Ms. Anita Sharma and Shri Harish Kumar Sharma, , in Anjana Kishore v. Puneet Kishore, (2002) 10 SCC 194 , in Shashi Garg (Smt) Vs. Arun Garg, and in Dinesh Kumar Shukla Vs. Smt. Neeta, of Division Bench of Madhya Pradesh High Court to substantiate his contention. He contends that when the parties have lived only for three days together and are not living together since last more than one year, it is obvious that marriage has been irretrievably broken and hence there is no point in punishing the parties by asking them to wait for further period of six months. He contends that said period is only directory and it can be waived in appropriate circumstances. According to him, when the petitioner No. 1 - wife is already getting married, the said period needs to be waived and the request for divorce by mutual consent needs to be granted immediately.

6. As against this, Shri Parihar, learned AGP has invited attention to express observations made by the Family Court on the judgments on which the petitioners have placed reliance. He states that in all those cases, the request for divorce by mutual consent has been considered after expiry of period of six months. He further contends that here, the marriage is love marriage, performed in Arya Samaj and parties have hardly lived together for three days and as such,

the said period of six months cannot be waived. He contends that Family Court has applied its mind correctly in the facts and circumstances of the case and this Court should not interfere in the matter in writ jurisdiction.

7. A perusal of judgment between Dhanjit Vadra v. Beena Vadra (supra) of Delhi High Court reveals that the said case was pending in Court since 1985. The parties were married on 12-3-1982, a child was born to them and they were living separately from 5-6-1984. The husband filed petition for grant of divorce u/s 13(1)(ia) of Hindu Marriage Act, 1955, on 11-2-1985. Efforts were made during the pendency of these proceedings to bring about the conciliation and evidence was recorded in January, 1988, March, 1989 and May 1989. Thereafter, on 5-9-1989, parties jointly requested to treat the petition for divorce as petition for grant of divorce by mutual consent. Thus, the application of mind by learned Single Judge of Delhi High Court needs to be appreciated in this background. In another case In Re: Grandhi Venkata Chitti Abbai (supra) of Andhra Pradesh High Court, again it appears that there was earlier litigation in the shape of proceedings u/s 125 of Criminal Procedure Code filed in the year 1995 - a proceeding for grant of maintenance. The wife also had filed criminal proceedings u/s 498 of Indian Penal Code in 1996. The village elders as well as well wishers of both the parties had tried to effect compromise under which sufficient safeguards were provided for maintenance of wife. Thus, the said judgment has been correctly appreciated by the learned Family Court in para 6 of its order. The judgment of Hon''ble Apex Court in the case between Anjana Kishore v. Puneet Kishore (supra) reveals that the case was instituted for divorce in the year 2000 and the terms of compromise reveal that total amount of Rs. Seven lakhs was given to wife for settlement. The Hon''ble Apex Court has considered the controversy on 3-8-2001 i.e. more than six months after the proceedings were initiated. In another judgment of the Hon''ble Apex Court between Anita Sabharwal v. Anil Sabharwal (supra), a divorce case was initiated in the year 1994 and again an amount of Rs. Seven lakh was agreed to be given to wife and recurring maintenance provision was made for education of children. The Hon''ble Apex Court was approached in 1996 and the judgment is delivered on 9-12-1996. Thus, again the waiting period of six months had already expired. In another judgment of the Hon''ble Apex Court in the case between Satish Garg v. Arun Garg (supra), divorce case was filed by the husband in the year 1996 and the Hon''ble Apex Court was approached in 1996. The Hon''ble Apex Court found that the parties have reached point of no return and the judgment of the Hon''ble Apex Court was pronounced on 18-9-1997. It is thus again after expiry of six months from the date of institution of proceedings before the Competent Court. The Division Bench judgment of Madhya Pradesh High Court between Dineshkumar Shukla v. Neeta (supra) reveals that the marriage was solemnized in the year 1987 and the parties had one issue. Husband filed proceedings on 8-1-1996 u/s 13(1) for seeking divorce on the ground of cruelty and the judgment of Hon''ble High Court is dated 4-1-2005. The Hon''ble High Court has held that waiting period of six months can be brought down in such proceedings

for divorce by mutual consent when all efforts for conciliation have failed. It is again apparent that the controversy has been considered after the expiry of period of six months.

8. The learned Counsel for the petitioner has also relied upon the judgment of Delhi High Court in the case of *In Re: Ms. Anita Sharma and Shri Harish Kumar Sharma*, . The said judgment is considered at length by the Family Court in paragraph 7 and I find it convenient to reproduce said paragraph 7 here.

The learned Counsel for the petitioners have also relied upon *In Re: Ms. Anita Sharma and Shri Harish Kumar Sharma*, . The Hon''ble High Court has laid down certain guidelines to ascertain that the marriage between the parties to really dead and has irretrievably broken. It is further observed by the Hon''ble High Court that the waiver must be granted by the Court if the tests are satisfied and it should not be granted merely because for asking by the parties. The tests are the maturity and the comprehension of the spouses absence of coercion or undue influence, the duration of the marriage sought to be dissolved, absence of possibility of any reconciliation lack of frivolity, lack of misrepresentation, the age of the spouses and the deleterious effect of continuance of sterile marriage on the prospects of re-marriage of the parties. In the present case the marriage between the parties is a love marriage. After the marriage they lived together only for three days and thereafter they are living separately. They have filed present petition immediately after completion of one year of their separation. In my opinion, the tests as stated in the ruling relied upon by the petitioners are mentioned with a view to examine that the parties have taken decision to dissolve the marriage with full thought and deep consideration. It is apparent that the petitioners have performed their marriage on their own without consulting their parents and now they want to dissolve their marriage by mutual consent. It is submitted by the learned Counsel for the petitioners that their parents have also endorsed their decision and the marriage of petitioner No. 1 is likely to be settled. The period of six months u/s 13B(2) of Hindu Marriage Act is provided with a view to give an opportunity to the parties to reconsider their decision of divorce by mutual consent. Under the Hindu Law the marriage is a sacrament and not mere contract. The law has always discouraged such hasty dissolution of marriage. The provisions of Section 13B(2) of Hindu Marriage Act is meant only with this object.

9. The Family Court has also made reference to the judgment of the Hon''ble Apex Court in the case between *Smt. Sureshtra Devi v. Om Prakash* (supra) and para 10 and 13 of said judgment are important. The said paragraphs are reproduced below:

Under Sub-section (2) the parties are required to make a joint motion not earlier than six months after the date of presentation of the petition and not later than 18 months after the said date. This motion enables the Court to proceed with the case in order to satisfy itself about the genuineness of the averments in the petition and also to find out whether the consent was not obtained by force,

fraud or under influence.

From the analysis of the Section, it will be apparent that the filing of the petition with mutual consent does not authorize the Court to make a decree for divorce. There is a period of waiting from 6 to 18 months. This interregnum was obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. This transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The spouse may not be a party to the joint motion under Sub-section (2). There is nothing in the section which prevents such course.

10. It will thus be seen that the Family Court has considered all the aspects having bearing on the aspect and has found that the period of six months cannot be brought down in the present case. It has also concluded that such application cannot be considered before expiry of statutory period of six months. In view of findings reached by the Family Court in para 7 of its order, with which I find no reason to differ. I am not inclined to take different view of the matter. The sequence of events above necessitate that the petitioners should wait for a period of six months.

No case is made out for bringing down said period in the facts and circumstances of this case. Writ Petition is, therefore, dismissed. There shall be no order as to costs.