

(2009) 01 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 6895 of 2008 (O&M)

Shiv Charan Singh

APPELLANT

Vs

Hon'ble the District Judge, District Court, Bathinda and
another

RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:

Citation : (2009) 1 Marr.LJ 295 : (2009) 5 RCR(Civil) 750

Hon'ble Judges : Rajesh Bindal, J

Advocate : Mr. Jaswinder Singh, Advocate. Mr. N.S. Dandiwal, Advocate.,
Advocates for appearing Parties

Judgement

Rajesh Bindal, J.

1. Challenge in the present petition is to the order dated 5.12.2008, passed by learned District Judge, Bathinda, whereby the application filed in a petition under Section 13B of the Hindu Marriage Act, 1955 (for short, 'the Act') for dispensing with the notice period of six months, was dismissed.

2. The parties were married as per Sikh rites on 16.1.2000. They resided together till 17.6.2001. No child was born out of the wedlock. Because of temperamental differences between the parties, they had been residing separately since then. On 3.11.2007, they filed a petition under Section 13B of the Act. Along with the petition, an application for waiving the statutory period of six months was also filed. On 17.11.2008, statements of the parties were recorded. However, the learned court below keeping in view the provisions of Section 13B of the Act, dismissed the application.

3. Learned counsel for the petitioner submitted that it is a case of broken marriage where the parties are living separately since 17.6.2001. The efforts from all quarters to make the parties compromise and settle down in their matrimonial home have failed. He has referred the judgment of Hon'ble the Supreme Court in Smt. Sureshta Devi v. Om Parkash, AIR 1992 SC 1904,

wherein Hon^{ble} the Supreme Court opined as under :

"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 could live as husband and wife. What seems to be necessary is that 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."

4. Still further, the submission is that even if it is assumed for the sake of argument that statutory period has not expired before filing the petition, even then this Court can very well condone the statutory period keeping in view the circumstances of the case. Reference has been made to order passed by this Court in Amit Jain v. Taruna Jain, 2007(3) RCR(Civil) 785 (P&H). wherein keeping in view the circumstances therein, this court condoned the statutory period and directed the learned courts below to pass the appropriate orders.

5. In the present case, what is evident from the record is that the parties did not settle in the marriage because of certain temperamental differences and this fact is established from the fact that they started living separately since 17.6.2001. The parties have categorically admitted that they are living separately since then and all the issues between the parties have been settled. As in the present case, on appreciation of the material placed on record by both the parties, it can very well be opined that marriage between the parties has irretrievably broken down because of incompatibility of temperament. The matrimonial bond between the parties is beyond repair. In fact, the marriage between the parties is only of name. The same has been wrecked beyond the hope of salvage.

6. Accordingly, the impugned order passed by the learned court below is set aside. The statutory period of six months is condoned and the matter is remitted back to the learned court below for further proceedings.

Parties through their counsels are directed to appear before the learned court below on 20.1.2009 for further proceedings.

The revision petition is disposed of in the manner indicated above.