
(2016) 03 CAL CK 0166
In the Calcutta High Court
Case No : Writ Petition No. 3290(W) of 2016

Smt. Sunita Kejriwal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 21
Hindu Marriage Act, 1955 — Section 13(1)

Citation : (2016) 3 CalHCN 297

Hon'ble Judges : Dipankar Datta, J.

Bench : Single Bench

Advocate : Ashish Kr. Bhattacharya and Pratima Mishra, Advocates, for the Petitioner; Ms. Arpita Chatterjee, Advocate, for the Respondent No. 4

Final Decision : Dismissed

Judgement

Dipankar Datta, J. - The petitioner's marriage with the respondent no. 4 has lasted in excess of 28 years. She is also the mother of a girl child, aged about 26 years, born in her wedlock with the respondent no. 4. It appears that the relation between the petitioner and the respondent no. 4 somehow turned sour. Disputes and differences having cropped up led the respondent no. 4 to institute Matrimonial Suit No. 1299 of 2013 before the court of the Additional District Judge at Barrackpore, North 24 Parganas, seeking divorce. The petition filed under section 13(1) of the Hindu Marriage Act, 1955 (hereafter the "Act") alleges cruelty of the petitioner in treating the respondent no.4 as a ground for grant of divorce.

2. The petitioner has, inter alia, challenged the constitutional validity of section 13(1) of the Act.

3. Mr. Bhattacharya, learned counsel appearing for the petitioner contends that section 13(1) of the Act should be declared ultra vires Articles 14 and 21 of the Constitution, since section 13 does not take into consideration the plight of children of spouses who, being at loggerheads, seek detachment from one

another once and for all. Referring to the girl child of the petitioner, an MBA student, it has been contended that the embarrassment she has to face at her age as a sequel to her parents being involved in a legal combat before a court of law is utterly distressing and disgraceful for her.

4. She would be a subject of ridicule in society. A suitable match may not be found for her, for society is averse to accepting someone as a bride from a family where the parents are not united. Since such a girl child would be at the mercy of society, the agony and trauma of the girl child, according to him, needs to be protected in terms of Articles 14 and 21 of the Constitution which guarantee equal protection of the laws and the right to live with dignity, respectively.

5. This Bench has not considered it necessary to call upon the respondents to answer.

6. A provision of law can be declared ultra vires if the legislature has no competence to enact it and/or if the provision contravenes any provision of the Constitution.

7. It is the second reason that has been urged to declare section 13(1) of the Act ultra vires.

8. It is indisputable that a child born in the wedlock of parents, who are not *ad idem* on issue(s) post marriage resulting in marital discord pushing either of them to institute a suit for divorce, may at times find himself/herself in the cross road of uncertainty. The very fact that a suit for divorce has been instituted by either of his/her parents leaves indelible marks of insecurity and discomfort in the mind of a child who is mature enough to foresee and comprehend the consequences of his parents not living unitedly in future. The deleterious effect that is bound to generate can well be imagined.

9. However, the legislature is neither supposed to be the guardian of every citizen of the State nor is it part of its duty to instill moral values in spouses so that they maintain cordial relations for the rest of their lives leaving no scope for a divorce. The very fact that divorce is provided for by the statute is an acknowledgement of the bitter truth that there might be situations, though not called for, which might drive a person to seek divorce.

10. After all, if all persuasive methods fail to bring about a solution between the spouses and should any or more of the grounds for divorce is/are established in a particular case, there is no reason as to why the marital knot that the spouses had tied should not be undone. It must be equally remembered that the fundamental right to live with dignity for the rest of his/her life is precious for a husband/wife, who successfully establishes a ground for divorce against the other. This Bench is of the considered view that it was not necessary for the legislature to make provisions for the welfare and interest of children of estranged parents since other provisions are there in the Act as well as other enactments to take care of them.

11. Mr. Bhattacharya is right that such provisions are more focused to take care of the maintenance aspect and are not intended to take care of the agony and trauma that such children have to undergo. However, merely because section 13(1) of the Act does not provide how such agony and trauma could be neutralised would be no ground to hold that estranged spouses still have to continue to stay together and live as husband and wife without any compatibility, and that the avenue for seeking divorce should be done away with.

12. Indeed, the institution of marriage is sacred and all possible steps are required to be taken at all levels to sustain it. In fact, provisions are there in the Act that would require the judge hearing the suit/petition to make attempts for the purpose of arriving at a compromise between the parties so that conjugal rights are restored.

13. This Bench expresses hope and trust that the learned judge in seisin of the suit/petition would leave no stone unturned to unite the spouses and to remove the cloud of uncertainty that endangers the girl child's future.

14. The writ petition stands dismissed, without order for costs, leaving the petitioner free to raise other points canvassed in this writ petition before an appropriate forum in accordance with law, if so advised.

15. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously.