

SONI KUMARI

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v.

DEEPAK KUMAR

(Civil Appeal No. 7164 of 2015)

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SEPTEMBER 16, 2015

[M.Y. EQBAL AND C. NAGAPPAN, JJ.]

Constitution of India, 1950: Article 142 – Invocation of power under – For waiving the cooling off period of 6 months for filing second motion u/s. 13-B of the Hindu Marriage Act – Held: In the instant case, Family Court had made necessary efforts for reconciliation between the parties but efforts failed – Appellant-wife taking plea that respondent-husband has to leave India for job purpose and it was not possible for him to return back in a year or two and, therefore, she would suffer mental agony and would also not be able to remarry – It is a fit case where in order to do complete justice to the parties, it is necessary to invoke the power u/Art.142 in an irreconcilable situation – Cooling off period of 6 months waived and decree of divorce by mutual consent granted – Hindu Marriage Act, 1955 – s.13-B(1).

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Allowing the appeal, the Court

HELD: 1. The order passed by the Family Court clearly showed that before passing the impugned order under Section 13-B(1) of the Act, the Family Court made necessary efforts for reconciliation between the parties but the efforts yielded no fruitful result. The Family Court, before passing the order, carefully perused the entire materials on the record including the joint statement of the parties. It is also not disputed that the respondent-husband would be leaving India for his job purpose and

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A once he goes out of the country, it would not be possible for him to return back in a year or two. In the event the respondent is not returned within the stipulated time for second motion then the appellant-wife would not only suffer mental agony but would also be not able to
 B remarry. [Para 8] [311-G-H; 312-A-B]

2. There is no connivance of any of the parties in the decision taken by the appellant and the respondent. It is a fit case where in order to do complete justice to the parties it becomes necessary to invoke the power under Article 142 of the Constitution in an irreconcilable situation. [Para 12] [315-F]

D *Vimi Vinod Chopra vs. Vinod Gulshan Chopra* (2013) 15 SCC 547; *Devinder Singh Narula vs. Meenakshi Nangia* (2012) 8 SCC 580: 2012 (7) SCR 372; *Anil Kumar Jain vs. Maya Jain* (2009) 10 SCC 415: 2009 (14) SCR 90 – relied on.

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Case Law Reference

	(2013) 15 SCC 547	relied on.	Para 9
	2012 (7) SCR 372	relied on.	Para 10
F	2009 (14) SCR 90	relied on.	Para 11

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7164 of 2015

G From the Judgment and Order dated 14.07.2015 of Family Court, South, Saket Court, New Delhi in HMA No. 613 of 2015.

Dr. Nirmal Chopra for the Appellant.

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Jatin Sapra (for Debasis Misra) for the Respondent. A

The Judgment of the Court was delivered by

M.Y. EQBAL, J.: 1. Leave granted.

2. This appeal by special leave is directed against order B dated 14.7.2015 passed by the Principal Judge, Family Court South, Saket, New Delhi in HMA No.613 of 2015, whereby C petition for first motion for divorce by mutual consent under section 13-B(1) of Hindu Marriage Act, 1955 (in short, 'the Act') moved by the parties has been allowed. However, Family Court rejected prayer for waiving of statutory period of six months D prescribed under section 13-B(2) of the Act for filing second motion.

3. The brief facts of the case lie in a narrow compass. D

4. The appellant and the respondent married as per Hindu E rites and customs at the parental house of the appellant sometime in the year 2009 and after marriage they shifted to Delhi. The parties ever since the marriage did not pull together F being of different habits, ideas and completely different in nature and temperament. They could not adjust with each other at all. Since February 2014, the appellant and the respondent started living separately as they had irreconcilable differences and there was no possibility of any reconciliation between them. F As a result, the appellant and the respondent filed a joint petition for divorce by mutual consent as contemplated under section 13-B(1) of the Hindu Marriage Act, 1955 in the court of G Principal Judge, Family Court, South Saket, New Delhi. Along with that joint petition for divorce, parties placed on record a true copy of details/confirmed air ticket from Delhi to Frankfurt for travel of the respondent on 16.07.2015 for his professional purpose.

5. The Family Court recorded the joint statement of the H

A first motion under section 13-B(1) of the Act on 14.7.2015 where they stated that the respondent-husband shall pay Rs. 15 Lakhs as full and final settlement of all her claims (past, present and future) and out of which, Rs.6 lakhs had already been received by the appellant-wife. It was further stated that there was no possibility of any reconciliation between the parties. On 14.7.2015, after recording joint statement of the first motion, the Principal Judge passed an interim order whereby she allowed the first motion petition for divorce and rejected the prayer for waiving of statutory period of six months prescribed under section 13-B(2) of the Act for filing the second motion. Hence, it is the appellant who moved this Court seeking relief for waiver of the prescribed period of six months.

6. For better appreciation, the order passed by the Principal Judge, Family Court, South Saket, New Delhi is extracted hereinbelow:

1.0 Smt. Soni Kumari and Sh. Deepak Kumar, both the petitioners, have jointly filed this petition u/s 13-B(1) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") for Soni Kumara and Deepak Kumar dissolution of their marriage by a decree of divorce consent.

2.0 This Court made sincere efforts for reconciliation between the parties; but, the efforts for reconciliation yielded no fruitful result. Both the petitioners submitted that they have made up their mind to part ways and take divorce by mutual consent, in terms of the compromise effected between them. Consequently, the joint statement of the petitioners was recorded today i.e. 14.07.2015.

3.0 I have heard both the sides and have also carefully perused the entire material on the record including the joint statement of the petitioners.

4.0 Petitioners have testified that marriage between them was solemnized on 27.11.2009 at Maharaj Ganj, Madhubani, Bihar according to Hindu rites and ceremonies. Proof of marriage- marriage photograph is Ex.P1 (Colly). It is stated that no child was born out of this wedlock. Petitioners have been living separately since February 2014 due to temperamental differences; they have not resumed cohabitation since then. It is also stated that now there is no possibility of their living together as husband and wife.

4.1 Vide their joint statement, petitioners have also stated that both of them have amicably settled all their claims and disputes vis-à-vis each other, related to their marriage with regard to stridhan, permanent alimony and maintenance (past, present and future) etc. in full and final as per the terms and conditions mentioned in the present petition Ex.PX and in the Settlement Agreement/ Compromise Deed, dated 6/7/2015, E.PY.

4.2 As per settlement, petitioner no.2/husband shall pay a total sum of Rs.15,00,000/- to the petitioner no.1/wife in full and final settlement of all her claims of stridhan, permanent alimony and maintenance (past, present and future). Out of the said amount, a sum of Rs.6,00,000/- has been received by the petitioner no.1/wife from petitioner no.2/husband on 02.07.2015. It has agreed that balance amount of Rs.9,00,000/- shall be paid by the petitioner no.2/husband to petitioner no.1/wife at the time of recording of statement in the second motion petition.

4.3 Both the petitioners undertook to withdraw all their cases/complaints/petitions, if any, and further not to file any case/complaint against each other/respective family members at any point of time in future with regard to this

A marriage. Both the petitioners undertook to abide by the terms and conditions mentioned in the present petition, Ex.PX and in the Settlement Agreement/Compromise Deed, dated 06.07.2015, E.PY.

B 5.0 From the joint statement of the petitioners and documents placed on record, it has come on record that the petitioners were married on 27.11.2009 and have been living separately since Feb-Mar 2014 on account of temperamental differences. From their joint statement,
C I am also satisfied that there is no collusion between the petitioners in filing this petition and their consent for divorce is free from any force, fraud, threat, pressure, coercion or undue influence. Petitioners have voluntarily decided to part ways amicably and seek dissolution of
D marriage by mutual consent in terms of settlement.

E 6.0 In view of the above, as this petition complies with provisions of section 13B(1) of the Act, it is accepted. However, marriage of the petitioners cannot be dissolved at this stage, keeping in view the provision of Section 13-B(2) of the Act, which provides for a minimum waiting period of six months from the date of presentation of their motion petition u/s 13-B(1) of the Act.

F 7.0 In view of the above, the petitioner are advised to reflect during this period and make further sincere efforts for reconciliation and revival of their matrimonial bond. In case, the petitioners fail to resolve their differences and resume cohabitation and still feel that revival of their
G matrimonial relationship is not possible and they wish to part ways permanently, they may take appropriate steps and seek dissolution of their marriage as per the provisions of Section 13-B(2) of the Act after statutory
H period of six months.

8.0 In view of the above, present petition under section 13-B(1) of HMA is disposed of accordingly. A

9.0 File be consigned to Record Room.

Announced in the open court today i.e. on 14.07.2015." B

7. We have heard learned counsel appearing for the parties. Learned counsel appearing for the appellant submitted that the appellant has made out the case for waiving of the statutory period of six months prescribed under Section 13-B of the Act in view of the fact that she has already received the entire compensation of Rs. 15 lakhs as full and final settlement of all her claims (past, present and future) as per the settlement arrived at between the parties. It has been further submitted that non-waiving of statutory period of six months will increase the agony of the appellant as nothing survives in the relationship between the parties except the legal ties. It has been further submitted on behalf of the appellant that this Court can only waive statutory period of six months by exercising power under Article 142 of the Constitution of India. Learned counsel submitted that the respondent as well has to go out of India for his job purpose and in case he leaves India before filing of the second motion petition, there is no likelihood of his returning for at least another one or two years. Under these circumstances, it will only increase mental agony of the appellant as she will have to wait for respondent to return to India and will not be able to remarry in spite of having received entire amount of compensation. C
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8. From the order passed by the Family Court, it is clear that before passing the impugned order under Section 13-B(1) of the Act, the Family Court made necessary efforts for reconciliation between the parties but the efforts yielded no fruitful result. The Family Court, before passing the order, G
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- A carefully perused the entire materials on the record including the joint statement of the parties. It has also not been disputed that the respondent-husband has to leave India for his job purpose and once he goes out of the country, it would not be possible for him to return back in a year or two. In the event
- B the respondent is not returned within the stipulated time for second motion then the appellant-wife would not only suffer mental agony but would also be not able to remarry.

9. In these facts, the only point to be considered is as to
- C whether it is a fit case where in order to give complete justice this Court should exercise power under Article 142 of the Constitution of India. A similar question came for consideration before this Court in the case of **Vimi Vinod Chopra vs. Vinod Gulshan Chopra**, (2013) 15 SCC 547. In that case, after
- D considering the terms of settlement arrived at between the parties, the Court observed:

- E “7. Since the parties have also agreed for annulment of their marriage, we are satisfied that this is a fit case where we may exercise our jurisdiction under Article 142 of the Constitution of India to give quietus to the multiple disputes between them as this will enable complete justice between the parties. Consequently, we waive the statutory period and pass the decree of divorce under
- F Section 13-B of the Hindu Marriage Act, 1955. As a result of this, the marriage solemnised between the parties on 7-8-1993 stands dissolved.”

10. Reference may be made to the decision of this Court
- G in the case of **Devinder Singh Narula vs. Meenakshi Nangia**, (2012) 8 SCC 580, where a similar question arose with regard to invocation of power under Article 142 of the Constitution of India for waiving the cooling off period of six months prior to filing of second motion under section 13-B of

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the Act. To do complete justice between the parties, the Court observed: A

“8. We have carefully considered the submissions made on behalf of the parties and have also considered our decision in *Anil Kumar Jain case*, (2009) 10 SCC 415. B It is no doubt true that the legislature had in its wisdom stipulated a cooling off period of six months from the date of filing of a petition for mutual divorce till such divorce is actually granted, with the intention that it would save the institution of marriage. It is also true that the intention of the legislature cannot be faulted with, but there may be occasions when in order to do complete justice to the parties it becomes necessary for this Court to invoke its powers under Article 142 in an irreconcilable situation. C In fact, in *Kiran v. Sharad Dutt*, which was considered in *Anil Kumar Jain case*, after living separately for many years and 11 years after initiating the proceedings under Section 13 of the Hindu Marriage Act, the parties filed a joint application before this Court for leave to amend the divorce petition and to convert the same into a proceeding under Section 13-B of the Act. Treating the petition as one under Section 13-B of the aforesaid Act, this Court by invoking its powers under Article 142 of the Constitution granted a decree of mutual divorce at the stage of the SLP itself. In different cases, in different situations, this Court had invoked its powers under Article 142 of the Constitution in order to do complete justice between the parties.” D E F

11. Reference can also be made to a decision of this Court in the case of *Anil Kumar Jain vs. Maya Jain*, (2009) 10 SCC 415, where it has been held as under: G

“29. In the ultimate analysis the aforesaid discussion throws up two propositions. The first proposition is that H

A although irretrievable breakdown of marriage is not one
of the grounds indicated whether under Sections 13 or
13-B of the Hindu Marriage Act, 1955 for grant of divorce,
the said doctrine can be applied to a proceeding under
B either of the said two provisions only where the
proceedings are before the Supreme Court. In exercise
of its extraordinary powers under Article 142 of the
Constitution the Supreme Court can grant relief to the
parties without even waiting for the statutory period of
C six months stipulated in Section 13-B of the aforesaid
Act. This doctrine of irretrievable breakdown of marriage
is not available even to the High Courts which do not
have powers similar to those exercised by the Supreme
Court under Article 142 of the Constitution. Neither the
D civil courts nor even the High Courts can, therefore, pass
orders before the periods prescribed under the relevant
provisions of the Act or on the grounds not provided for
in Sections 13 and 13-B of the Hindu Marriage Act, 1955.

E 30. The second proposition is that although the Supreme
Court can, in exercise of its extraordinary powers under
Article 142 of the Constitution, convert a proceeding
under Section 13 of the Hindu Marriage Act, 1955, into
one under Section 13-B and pass a decree for mutual
F divorce, without waiting for the statutory period of six
months, none of the other courts can exercise such
powers. The other courts are not competent to pass a
decree for mutual divorce if one of the consenting parties
withdraws his/her consent before the decree is passed.
G Under the existing laws, the consent given by the parties
at the time of filing of the joint petition for divorce by mutual
consent has to subsist till the second stage when the
petition comes up for orders and a decree for divorce is
finally passed and it is only the Supreme Court, which, in
H exercise of its extraordinary powers under Article 142 of

the Constitution, can pass orders to do complete justice to the parties. A

31. The various decisions referred to above merely indicate that the Supreme Court can in special circumstances pass appropriate orders to do justice to the parties in a given fact situation by invoking its powers under Article 142 of the Constitution, but in normal circumstances the provisions of the statute have to be given effect to. The law as explained in *Sureshta Devi case, (1991) 2 SCC 25*, still holds good, though with certain variations as far as the Supreme Court is concerned and that too in the light of Article 142 of the Constitution." B C

12. We have given our anxious consideration in the matter and the terms of settlement arrived at between the parties and in furtherance of the settlement the appellant-wife has already received the entire amount of compensation from the respondent-husband. We have also considered the satisfaction recorded by the Family Court with regard to the intention of the parties to mutually take divorce and there is no connivance of any of the parties in the decision taken by the appellant and the respondent. In our view, it is a fit case where in order to do complete justice to the parties it becomes necessary to invoke the power under Article 142 of the Constitution in an irreconcilable situation. D E F

13. For the aforesaid reason, we allow the appeal and waive the cooling off period of six months and grant a decree of mutual divorce to the parties and direct that the marriage between the parties shall stand dissolved by mutual consent. G