

A RAJ KUMAR RANA

v.

RITA RATHORE

B (Civil Appeal No. 6161 of 2010)

MARCH 10, 2015

[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]

C *Hindu Marriage Act, 1955: s.13 – Divorce petition by*
husband – Dismissed by trial court and High Court –
Appeal – Supreme Court directed appellant-husband to
deposit Rs. 10 lacs – On deposit of Rs. 10 lacs, parties
D referred to Mediation Centre – Respondent-wife filed
affidavit expressing her consent for divorce and stated that
the amount of Rs. 10 lacs deposited by appellant be paid
to her as permanent alimony and also as maintenance of
E the minor son – Pursuant to the affidavit filed by the
respondent-wife and taking into consideration the strained
relationship between the parties for long time, judgments
of both the courts below set aside – In order to render
justice between the parties, in exercise of power u/Article
142 of the Constitution of India, the marriage between the
F appellant and the respondent dissolved by mutual consent
– Amount of Rs.10 lacs lying in Court be invested in the
name of minor son represented by the respondent in any
one of the Nationalized Bank as per the choice of the
respondent till he attains majority – The respondent is
G permitted to withdraw the periodical interest accrued
thereon once in a year directly from the bank and the same
shall be utilized for the welfare of the minor son –
Constitution of India, 1950 – Article 142.

H

CIVIL APPELLATE JURISDICTION : Civil Appeal No. A
6161 of 2010

From the Judgment and Order dated 10.11.2008 of the
High Court of Himachal Pradesh at Shimla in F.A. O. No.
266 of 2004. B

Harpreet Singh, Rajesh Gupta, Pratap Venugopal, K.
J. John & Co. for the Appeallant.

Ms. Radhika Gautam, E. C. Agrawala for the
Respondent. C

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. This appeal arises out of the
judgment dated 10.11.2008 passed by the High Court of D
Himachal Pradesh at Shimla in FAO (HMA) No.266/2004,
dismissing the appellant's appeal and declining to pass the
decree of divorce.

2. Marriage between the appellant-husband and E
respondent-wife was solemnized on 10.5.1997 and both of
them resided together as husband and wife for about nine
months. Case of the appellant is that both parties were
employed in District Hospital at different places. Appellant
was transferred to District Hospital, Solan, Himachal F
Pradesh and he started living at Solan. By their joint efforts,
they were able to get the respondent transferred to Solan.
The respondent-wife became pregnant and she went to her
parents house at Nirsu in Rampur, Himachal Pradesh. G
Case of the appellant is that in February 1998, respondent-
wife left Solan for delivery at her parents house at Rampur
and thereafter she never came back and never stayed with
the appellant. Parties are said to have separated since
February 1998 and a male child was born out of their H
wedlock at Rampur on 2.6.1998. Appellant alleged that

A despite his request, respondent continued to stay with her
child at her parents house at Nirsu in Rampur. In spite of
being transferred to Solan, respondent refused to join the
appellant at Solan and instead she got herself adjusted at
IGMC Shimla. According to the appellant-husband, when
B he requested the respondent-wife to part ways by mutual
consent, respondent and her parents demanded
Rs.10,00,000/- as maintenance. The appellant filed petition
for divorce under Section 13 of the Hindu Marriage Act
against the respondent on the ground of cruelty and
C desertion. Vide its judgment dated 2.1.2003, District Judge,
Solan dismissed the petition both on grounds of cruelty and
desertion. Regarding desertion, trial court observed that
parties have strained relations for long time and are residing
D separately on account of exigencies of their services and
not on account of hostilities and there was no *animus
deserendi* on the part of the respondent in living separate.
The appellant preferred appeal before the High Court and
vide its judgment dated 10.11.2008, the High Court
E dismissed the appeal. In this appeal, the appellant
challenges the correctness of the dismissal of his divorce
petition.

3. Vide order dated 25.6.2014, while referring the
F parties to mediation, this Court has asked the appellant
whether he will be willing to deposit a sum of Rs.10,00,000/
- before this Court by way of permanent alimony as well
as maintenance for the male child from the marriage.
Learned counsel for appellant/husband submitted that the
G sum of Rs.10,00,000/- will be deposited within six weeks
from the date of the order. As per the order, commencement
of mediation was made conditional on deposit of
Rs.10,00,000/-. In compliance with the direction of this
Court, the appellant has deposited a sum of Rs.10,00,000/
H -. The parties were referred to the Mediation Centre at

Shimla. To enable the respondent-wife to travel to Shimla, a further amount of Rs.25,000/- was paid to the respondent-wife by way of demand draft. A

4. Expressing her consent for divorce and stating that the amount of Rs.10,00,000/- deposited by the appellant in this Court be paid to her as permanent alimony and also as maintenance of the minor son, the respondent has filed affidavit. In the affidavit, the respondent has stated as under:- B

"It is most humbly submitted that in the interest of my son and overall bringing an end to the disputes, I am agreeable for a Divorce. However all the allegations/contentions raised in Divorce Petition and the present Special Leave Petition are denied. The Appellant has made bald and false allegations in these Petitions. In these circumstances, this Hon'ble Court may protect the interest of the Respondent herein by recording that the Divorce is being granted by mutual consent and accordingly pass appropriate orders in the interest of justice." C D E

5. Pursuant to the affidavit filed by the respondent-wife, taking into consideration that the relationship between the parties are strained for quite a long time, judgments of both the courts below are set aside and this appeal is allowed. In order to render justice between the parties, in exercise of our power under Article 142 of the Constitution of India, the marriage between the appellant and the respondent is dissolved by mutual consent. The amount of Rs.10,00,000/- lying in this Court's deposit be invested in the name of minor son represented by the respondent in any one of the Nationalized Bank as per the choice of the respondent till he attains majority. The respondent is permitted to withdraw the periodical interest accrued thereon once in a year F G H

A directly from the bank and the same shall be utilized for the welfare of the minor son. No costs. Copy of this judgment shall be sent to the District Judge, Solan, H.P.

Devika Gujral

Appeal allowed.