

Equivalent citations: 1997 VIAD Delhi 557, 69 (1997) DLT 937

Bench: M Sarin

Arvind Sharma vs Dhara Sharma on 6/11/1997

JUDGMENT

Manmohan Sarin, J.

(1) The petitioner/husband aggrieved by the order dated 20.9.97 passed by the Additional District Judge in H.M.A. No. 844/97, has preferred this Civil Revision Petition. By the impugned order, the learned Additional District Judge did not accede to the request of the petitioner for waiving of the statutory period of six months for filing of the second motion for divorce under Section 13B(2) of the Hindu Marriage Act and directed the petition to be listed on 21.3.98.

(2) The respondent supports the petitioner in the present Revision Petition. The facts giving rise to the present petition may be briefly noticed: Petitioner was married to the respondent on 9.11.97. The marriage ran into rough weather. There were differences between the parties, leading to the respondent filing a complaint with the Dowry Cell under Section 406/498A/34 Indian Penal Code which was registered as Fir No.531/97 with Police Station, R.K.Puram, New Delhi. The petitioner No. 1 and his family members were constrained to seek anticipatory bail. In the event, the parties have resolved their differences and decided to get the marriage dissolved by decree of divorce by mutual consent.

(3) The petitioners filed petition bearing Hma 843/97 under Section 13(B)1 of the Hindu Marriage Act. The learned Additional District Judge registered the petition and recorded the statement of parties. He found that there was no chance of reconciliation in marriage which had irretrievably broken down. Vide order dated 20.9.97, petition was taken on record, with liberty to the parties to apply for the second motion in accordance with law. The petitioners immediately preferred the second petition also which was registered as H.M.A. No.844/97. The learned Additional District Judge declined to waive the period of six months. While declining to waive the period he further observed that a sum of Rs. 4,00,000.00 was to be paid to the respondent/wife in settlement of all her claims. Rs. 2,00,000.00 had been paid at the time of first motion under Section 13-B. The remaining Rs. 2,00,000.00 was to be paid in two installments, first one at the time of quashing of the Criminal proceedings and the second at the time of marriage being dissolved by the second motion under Section 13(B)2 of Hindu Marriage Act.

(4) Learned counsel for the petitioner has relied on Dhanjit Vadra Vs. Smt. Beena Vadra , a decision of single bench of this court, wherein it was held that the time specified under sub-section (2) of 13(B) of the Hindu Marriage Act was merely a matter of formality and a decree of divorce by mutual consent could be granted without waiting for the period of six months under Sub-section (2) of Section 13(B) of the Hindu Marriage Act. The court observed that the time specified under sub-section (2) can be waived if the court is satisfied that the parties have been living separately for a period of one year and they have not been able to live together, and have mutually agreed that the marriage should be dissolved as envisaged by Sub-section (1) of Section 13(B)

of the Act. Learned counsel also relied on K.Om Prakash Vs. K.Nalini holding that the provision 13(B)(2) was directory and the provision does not fetter the court from passing an instant decree of divorce, if the court is satisfied that the marriage should be snapped immediately. To the same effect, there is another decision of the Karnataka High Court viz. Smt.Roopa Reddy Vs. Prabhakar Reddy . The court again held that Section 13-B though

couched in "mandatory" form is "directory" in substance. It was observed "when the intention of the Legislature in introducing S.13-B(2) is to liberalise and to unlock the wedlock, the Legislature has never intended the period of 6 months mentioned in the Act shall be strictly complied with. But, in spirit the Section is directory in nature and it has been incorporated to help two discordant spouses to get quick separation and to lead their remaining life without any agony. If S.13-B(2) is read as mandatory, the very purpose of liberalising the policy of decree of divorce by mutual consent will be frustrated. Thus, S.13-B(2), though it is mandatory in form is directory in substance". The impugned order in so far as it holds that the period of 6 months for the second motion cannot at all be waived is not sustainable.

(5) In the instant case, there has been yet another development. The petitioners had preferred a petition under Section 482 of the Code of Criminal Procedure for quashing of Fir 531/97. The said petition bearing No.Crl.M.(M).2532/97 was allowed by this court on the Criminal side, by order passed today itself and the Criminal Proceedings pursuant to the said Fir stand quashed. Accordingly, one of the factors which weighed with the learned Additional District Judge in deferring the consideration of the petition of second motion is no longer existing. In these circumstances, it would be open to the petitioner, to approach the Trial Court for preponement of the hearing of the petition for the second motion, viz. H.M.A. No. 844/97, which has been directed to be listed on 21.3.98. The Trial Court without being affected by the impugned order would consider any such application moved, in the light of the aforesaid judgments noticed and the subsequent event of quashing the Fir No. 531/97 and dispose of the said petition in accordance with law. The revision petition is disposed of with the aforesaid observations and directions.