

Equivalent citations: 119 (2005) DLT 567, 2005 (82) DRJ 22

Bench: M Mudgal

Sh. Tarun Kumar Vaish vs Ms. Meenakshi Vaish on 13/4/2005

JUDGMENT

Mukul Mudgal, J.

1. Rule. With the consent of the counsel for the parties, the petition is taken up for final hearing.

2. This petition under Article 227 under Article 227 of the Constitution of India, challenges the Order dated 27th July, 2004, passed by the Additional District Judge in HMA. No. 591 of 2004, by which an application moved by which an application moved on 13th July, 2004 by both the parties, that is, the petitioner, Sh. Tarun Kumar Vaish and the respondent, Ms. Meenakshi Vaish, seeking permission to present the petition under Section 13B of the Hindu Marriage Act, 1955(in short the 'HMA') for divorce, by mutual consent prior to the expiry of one year from the date of marriage of the parties, that is, 30th April, 2004 was rejected and accordingly the petition under Section 13B of the HMA Act was dismissed.

3. The relevant portion of the proviso to Section 14 of the HMA reads as follows:-

"14(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, [unless at the date of the presentation of the petition one year has elapsed since the date of the marriage :

Provided that the Court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented [before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the [expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the [expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed."

4. Both the parties have contended that their plea for exemption from waiting for one year under proviso under Section 14(1) of the Act should have been granted since the parties have been living separately since 14th May, 2005 and the marriage has not even been consummated. It has further been contended that the parties have irreconcilable differences between them and that they will suffer mental as well as physical hardship on account of the continuation of their marriage. It has also been submitted that the families of both the parties have already initiated the process of re-marrying them.

5. On these grounds, the exemption for presenting the petition under Section 13(B)(1) of the Act prior to the one year from the date of the marriage, that is, 30th April, 2004 was sought. The impugned Order dated 27th July, 2004 has noted that the exceptional hardship has not been explained by the parties and as such the petition was dismissed on the ground that it was premature and that there was no justification to waive the statutory period of one year.

6. In my view, the parties have given sufficient indication of the hardships for seeking exemption for expiry of one year in their petition before the Additional District Judge.

7. This Court also in a judgment in FAO 756 of 2003 in Pooja Gupta and Anr. v. Nil in respect of a petition under Section 13B(1) of the Act had held as follows:

"The above statement of objects and reasons though made in the context of parity with Section 28 of Special Marriage Act also clearly indicates that the legislative intent was expeditious disposal of divorces by mutual consent. In my view as long as the Court is satisfied as an essential reason for exemption for filing a divorce by mutual consent prior to expiry of one year after the marriage that the plea for mutual consent is not under coercion/intimidation or undue influence and there are no chances of reconciliation and the parties have fully understood the impact and effect of the divorce by mutual consent, the continuance of such a marriage is bound to cause undue hardship to the spouses. The other relevant considerations which may be considered for granting the exemption from passage of one year before filing a petition for divorce by mutual consent are:-

- a) the maturity and the comprehension of the spouses;
- (b) absence of coercion/intimidation/undue influence;
- (c) the duration of the marriage sought to be dissolved;
- (d) absence of any possibility of reconciliation;
- (e) lack of frivolity;
- (f) lack of misrepresentation or concealment
- (g) the age of the spouses and the deleterious effect of the continuance of a sterile marriage on the prospects of re-marriage of the parties.

8. I have ascertained the resolve to dissolve the marriage from both the parties as well as from the elder sister of the respondent, present in Court today, who agree and reiterate that it would be appropriate and indeed desirable and essential if the divorce by mutual consent is granted. On my personal examination of the parties, I am satisfied that the decision is not influenced by any external factor. Both the parties are aged 33 and 26 years respectively. They both appear to be matured, independent and fully committed even after a passage of about 8 months from the date of filing of the petition to part company. Thus, even after a passage of about 11 months from the date of the marriage, the parties are firm in their resolve to dissolve the marriage. Thus it is not a hasty decision to seek a divorce but the decision is a mature and a well considered one and has not been arrived at under any external influence.

9. In this view of the matter, the petition is allowed and the Order dated 27th July, 2004 is set aside. The claim for exemption from waiting from one year on the facts of the present case, therefore justified. Accordingly, the permission to file the petition under Section 13(B) of the HMA on 13th July, 2004 was justified in view of the exceptional hardship explained by the parties, in the present petition. The petition under Section 13(B)(1) of the Act which was filed on 13th July, 2004 is accordingly allowed and the marriage solemnized between the parties, that is, Tarun Kumar Vaish and Meenakshi Vaish on 30th April, 2004 is dissolved by a decree under Section 13(B)(1) of the Act with effect from 18th, April 2005.

10. The petition stands allowed and disposed of accordingly. Office to draw up the decree accordingly.