

Before M. M. S. Bedi & Anupinder Singh Grewal, JJ.

DEEPIKA @ RIYA—Appellant

versus

RAHUL—Respondent

FAO No.M-260 of 2017

August 28, 2018

Hindu Marriage Act, 1955—S.13-B—Appellant and respondent had filed a joint petition under S.13-B of the Hindu Marriage Act for dissolution of the marriage by mutual consent—White recording statement at the joint motion, the appellant wife had received Rs.7 lakhs out of the agreed amount of Rs.15 lakhs—The case kept getting adjourned, but the respondent husband could not pay the remaining Rs.8 lakhs, and a period of 18 months elapsed— Trial Court dismissed the petition as infructuous, because as per S.13 of the Act, the petition can be kept pending upto a maximum of 18 months— Before High Court, both the parties reiterated their intention of living separately and the appellant admitted receiving the balance amount—Count held that the period prescribed under S.13-B(2) of the Act is directory and not mandatory—Order of trial Court set aside and matter remanded for getting statements recorded at the second motion stage if the parties are willing—Appeal allowed.

Held, that the we have considered the ratio of the said judgment and the scope of Section 13-B (2) of the Hindu Marriage Act and are of the opinion that no straightjacket formula can be laid down in every case of expiry of period of 18 months. Circumstances of each particular case have been taken into consideration. If both the parties do not withdraw their consent and there are reasonable grounds for deferring the recording of statement at second motion stage and intention of the parties to seek dissolution of marriage by mutual consent is not withdrawn, the Court has always got discretion to extend the period. We find the present case to be such that the period of 18 months prescribed in Section 13-B (2) of the Hindu Marriage Act has to be extended as both the parties present before this Court have expressly stated that they have not withdrawn their consent.

(Para 8)

Further held, that the appeal is allowed. Order dated 27.09.2017 is hereby set aside and it is ordered that both the parties will appear

before the lower Court on 15.09.2018. The lower Court/successor Court shall take up the case on said date and in case the parties are ready to get their statement recorded at second motion stage, the said date will be considered to be the second motion stage where both the parties would be entitled to give their statements. In case, both the parties make statement on said date or any other subsequent day, as convenient to the Court, it will be open to the lower Court to grant decree of divorce to the parties.

(Para 9)

Rajesh Sethi, Advocate, *for the appellant.*

Jasmal Singh Brar, Advocate, for the respondent.

M.M.S. BEDI, J (ORAL)

CM-15647-CII-2018

(1) Miscellaneous application is allowed.

(2) Documents Annexures A-1 and A-2 are permitted to be taken on record.

FAO-M-260-2017

(3) Both the parties are present in person.

(4) Appellant-wife Deepika @ Riya, present in the Court, has made a statement to the effect that she had received a sum of Rs.7 lakh at the time of recording of statement at first motion stage on 22.12.2015. Thereafter, on account of non-payment of the balance of Rs.8 lakh within statutory period of six months and non-compliance of the terms of the settlement arrived at between the parties, petition under Section 13-B of the Hindu Marriage Act could not be disposed of within a period of 18 months as a result of which Additional District Judge, Sirsa has dismissed the petition under Section 13-B of the Hindu Marriage Act. She, however, admitted that by now the entire amount of Rs.15 lakh, agreed to between the parties, has been received by her and that the petition for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, filed by the parties before the lower Court, should be allowed.

(5) Respondent-husband Rahul, present in the Court, has stated that he has not withdrawn his consent given at first motion hearing but on account of paucity of money, he could not arrange sum of Rs.8 lakh. After arrangement of the said amount, the same has been handed over

to the appellant-wife. He has prayed that decree of divorce be granted by mutual consent as the consent given on first date of hearing i.e. on 22.12.2015, has not been withdrawn by the parties.

(6) We have carefully considered the facts and circumstances of the present case and find that both the parties had filed a petition under Section 13-B of the Hindu Marriage Act on 22.12.2015 on which date their statements at first motion were recorded by Additional District Judge, Sirsa. They were given six months period to rethink over the decision as such the case was adjourned for 01.07.2016. On 01.07.2016, one of the parties, Deepika @ Riya did not appear. However, her counsel requested for adjournment as such, the case was adjourned to 12.08.2016 for recording the statement of both the parties at second motion stage. On 12.08.2016 and 23.09.2016, case was adjourned on request of both the parties. On 24.10.2016, again appellant-wife Deepika @ Riya did not appear before the Court as such the case was adjourned to 08.11.2016. On said date, an application was filed by appellant-wife Deepika @ Riya for rethinking and to take decision taking into consideration the future interest of her son, as such the case was adjourned to 22.06.2017. On 22.06.2017, an application was filed on behalf of respondent-husband Rahul for refund of Rs.7 lakh paid by him at the time of recording of statement at first motion stage. Thereafter, the case was adjourned for filing reply to the said application for 19.01.2017. On 09.02.2017, appellant-wife Deepika @ Riya made a statement that she was ready to give second stage motion statement. Thereafter, the case was adjourned to 21.02.2017. On 21.02.2017, statement of both the parties could not be recorded as such the case was adjourned to 07.04.2017. On 07.04.2017 when respondent-husband Rahul made a statement that he did not want to press his application dated 08.11.2016 and requested for time for making the payment of Rs.8 lakh as such the case was adjourned to 01.07.2017 for recording the statement of the parties at second motion stage. On 01.07.2017 the statement of both the parties could not be recorded as respondent-husband Rahul could not arrange the remaining amount as such the case was adjourned for 08.08.2017. On 08.08.2017, an application under Section 13-B (2) of the Hindu Marriage Act was filed and case was adjourned to 10.08.2017 for reply to the same. Thereafter, reply was filed and case was adjourned for 17.08.2017, 21.08.2017 and 12.09.2017 for arguments on the application. On 27.09.2017, the lower Court formed an opinion that period of 18 months had elapsed, as such petition under Section 13-B of the Hindu Marriage Act was dismissed as having rendered infructuous.

(7) The said order has been assailed by both the parties before this Court. Both the parties have submitted that on account of certain misunderstandings which had cropped up on account of non-availability of the balance of Rs.8 lakh with respondent-husband Rahul and the appellant- wife having not given the statement at second motion stage without receipt of said amount, the proceedings lingered on but it has been informed by both the parties that they still have no intention to stay together. They have affirmed that they have been living separately for the last more than three years. The entire amount of Rs.15 lakh as agreed to between the parties as permanent alimony has been received. There being no likelihood of any reconciliation, they have settled their differences regarding alimony and custody of the child. No other issue is pending.

(8) We have considered the above said situation and form an opinion that since the mutual consent for divorce, stated at first motion stage, is existing till date but only on account of paucity of money with the husband, second motion statement could not be recorded. There are reasonable grounds for the delay which has been caused.

(9) The provisions of Section 13-B (2) of the Hindu Marriage Act had been taken into consideration in *Amardeep Singh versus Harveen Kaur*¹ by the Supreme Court and it has been observed that period prescribed under Section 13-B (2) of the Hindu Marriage Act is directory and not mandatory.

(10) We have considered the ratio of the said judgment and the scope of Section 13-B (2) of the Hindu Marriage Act and are of the opinion that no straightjacket formula can be laid down in every case of expiry of period of 18 months. Circumstances of each particular case have been taken into consideration. If both the parties do not withdraw their consent and there are reasonable grounds for deferring the recording of statement at second motion stage and intention of the parties to seek dissolution of marriage by mutual consent is not withdrawn, the Court has always got discretion to extend the period. We find the present case to be such that the period of 18 months prescribed in Section 13-B (2) of the Hindu Marriage Act has to be extended as both the parties present before this Court have expressly stated that they have not withdrawn their consent.

(11) The appeal is allowed. Order dated 27.09.2017 is hereby set

¹ 2017 (4) R.C.R. (Civil) 607

aside and it is ordered that both the parties will appear before the lower Court on 15.09.2018. The lower Court/successor Court shall take up the case on said date and in case the parties are ready to get their statement recorded at second motion stage, the said date will be considered to be the second motion stage where both the parties would be entitled to give their statements. In case, both the parties make statement on said date or any other subsequent day, as convenient to the Court, it will be open to the lower Court to grant decree of divorce to the parties.

P.S. Bajwa