

# PUNJAB AND HARYANA HIGH COURT

Harcharan Kaur

Vs

Nachhattar Singh

First Appeal from Order No. 20-M of 1986

(D.S. Tewatia and M.R. Agnihotri, JJ.)

22.05.1987

## JUDGMENT

### **M.R. Agnihotri, J.**

1. This first appeal has been filed by Smt. Harcharan Kaur wife of Nachhattar Singh against the decree of divorce granted in favour of husband Nachhattar Singh under sub-section (2) of Section 13-B of the Hindu Marriage Act 1955, by the learned Additional Senior Subordinate Judge, Jagraon, on 17th December, 1985.

2. Briefly stated, on 26th June, 1970, Nachhattar Singh son of Chanan Singh, resident of village Sudhar, Tehsil Jagraon, District Ludhiana, married Smt. Harcharan Kaur daughter of Nahar Singh, of village Raowal, Tehsil Jagraon, District Ludhiana, by solemnizing the marriage by performing Anand Karj ceremony in village Raowal. The parties lived together for about thirteen years as husband and wife and out of this wedlock two children were born - son Hardeep Singh aged about 12-1/2 years and daughter Mandeep Kaur aged about 4-1/2 years.

3. In December, 1982, relations between the husband and wife got strained and they started living separately with effect from January, 1983. Having lived separately for about one and a half years, they agreed to have their marriage dissolved by mutual consent, as a result whereof a petition under section 13-B of the Hindu Marriage Act, 195 (hereinafter referred to as the Act), for dissolution of marriage by a decree of divorce was presented by husband Nachhattar Singh and wife Harcharan Kaur together. The petition filed on 23rd July, 1984, came up before the Court for recording the statements of the parties on 24th July, 1984. After recording the statements of both the parties on the said date, the petition was adjourned to 28th January, 1985, to comply with the statutory requirement laid down in sub-section (2) of Section 13-B of the Act, that is, the marriage can be dissolved not earlier than six months after the date of presentation of the petition.

4. However, on 28th January, 1985, Smt. Harcharan Kaur, the present appellant, failed to appear in the Court and was summoned again for 6th February, 1985. On the adjourned date of hearing, that is, on 6th February, 1985, the wife, Harcharan Kaur, made a statement in the Court that she did not want to divorce her husband and the petition for divorce submitted on 23rd July, 1984, be

dismissed. Accordingly, acting upon the statement of Harcharan Kaur, the Court dismissed the petition on 6th February, 1985, obviously on the ground that one of the parties was not willing to dissolve the marriage by mutual consent.

5. Aggrieved by this order, Nachhattar Singh approached the High Court by filing F.A.O. No. 100-M of 1985. That appeal was allowed by the learned Single Judge of this Court on 9th September, 1985, vide his judgment reported as *Nachhattar Singh v. Harcharan Kaur*<sup>1</sup>, whereby the order of the learned Additional Senior Subordinate Judge was set aside and the case was sent back for making inquiry as envisaged by sub-section (2) of Section 13-B of the Act, and to decide thereafter the petition for divorce by mutual consent in accordance with law. The relevant portion of the judgment of the learned Single Judge is reproduced below :-

"The impugned orders suffers from legal infirmity and is therefore, unsustainable. Sub-section (2) of Section 13-B of the Act is in the following terms :-

'(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.'

A reading of this sub-section would show that the scheme of Section 13-B of the Act does not envisage withdrawal of consent by one party. The petition can be dismissed as withdrawn only if both the parties who had filed the petition together agree to withdraw the same. Six months after the date of the presentation of the petition and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties, the Court has to satisfy itself, after hearing the parties and after making such inquiries as it thinks fit, that the petition was in fact presented by both the parties to the marriage, that they have mutually agreed that the marriage should be dissolved. If both the parties had voluntarily consented to file the petition for dissolving the marriage by mutual consent and all the other conditions mentioned in sub-section (1) of Section 13-B of the Act are fulfilled, it will not be open to a party to withdraw the consent. In the present case, without making an inquiry under sub-section (2) the Trial Court had dismissed the petition as withdrawn which could not be done merely on the asking of one party."

6. In pursuance of the aforesaid order, the Trial Court hold the necessary inquiry and felt satisfied that the petition, in fact, was presented by both the parties as they had mutually agreed for dissolution of their marriage and that all the conditions mentioned in sub-section (2) of Section 13-B *ibid* was passed by the learned Additional Senior Subordinate Judge declaring the marriage between the parties to be dissolved with effect from the 17th December, 1985, that is, the date of the decree.

7. Aggrieved against the above decree of divorce granted in favour of the husband, Nachhattar

Singh, respondent, Smt. Harcharan Kaur has come up in appeal to this Court. At the time of admission of the appeal, it was brought to the notice of the Motion Bench that there were conflicting Single Bench judgments regarding the question as to whether the parties had to give their consent both at the initial stage and also at the time when the matter was taken up finally for decision on the petition under section 13-B of the Act. In view of this, the appeal was admitted to Division Bench. In these circumstances, it has come up for hearing before us.

8. Before deciding the appeal on merits, endeavors were made for bringing about reconciliation between the parties for which they were summoned to be personally present in the Court, but the parties refused to reconcile as they were keen on contesting the litigation.

9. Mr. I.S. Vimal, learned counsel for the appellant wife, has vehemently argued to contend that the view taken by the learned Single Judge in the earlier appeal on 9th September, 1985, deserved to be reconsidered as the same did not lay down the law correctly. According to the learned counsel, a petition under section 13-B could be withdrawn by either of the parties unilaterally and for that withdrawal a joint application or request by the husband and wife together was neither contemplated by the statute nor was possible in the nature of litigation. In support of his proposition, the learned counsel placed reliance on the following decisions in which this view has, of course, been taken by the learned Judge of various High Courts : *Gurdip Singh Johar v. Kulwant Kaur*<sup>2</sup>, and *Santosh Kumari v. Virendra Kumar*<sup>3</sup>,

10. On the other hand, Mr. G.S. Punia, learned counsel appearing on behalf of the respondent husband Nachhattar Singh, has placed firm reliance on the earlier judgment of the learned Single Judge, between the parties : 1986-1(89) PLR 24. In support of the same, reference was made by Mr. Punia to the judgment reported as *Nitin Ramnaik Lal Jhaveri v. Padmini Nitin Jhaveri*<sup>4</sup>, which in turn has placed reliance on an earlier judgment of the same High Court in *Jayashree Ramesh v. Ramesh Bhikaji*<sup>5</sup>, To the same view is the judgment of the Madhya Pradesh High Court reported as *Meena Dutta v. Anirudh Dutta*<sup>6</sup>, In all these cases, the learned Judges have taken the view that once parties to the marriage has consented to prefer a petition for the dissolution of marriage by mutual consent, the said consent could not be withdrawn by either of the parties unilaterally.

11. With respect, we do not agree with the view taken by the learned Single Judge in this very case earlier 1986-1(89) PLR 24, while sending the case back to the Trial Court for inquiry, as also with the judgments of the Bombay and Madhya Pradesh High Courts referred to above. In our view, unless the parties to the petition under Section 13-B of the Act, who have mutually consented to have the marriage dissolved, continue to signify their mutual consent for the dissolution of the marriage right upto the date of the decree, the marriage cannot be dissolved under sub-section (2) of Section 13-B of the Act merely on the basis that six months earlier the parties has together presented the petition for dissolution of marriage by mutual consent. Either of the parties to the petition under Section 13-B, that is, husband or wife, is at liberty to revoke its consent any time before the petition is finally disposed of; and if the other party is still keen to have the marriage dissolved, the other provisions of the Hindu Marriage Act are still available for the grant of necessary relief, if a case is made out for the same. The object of Section 13-B is to provide an additional speedy remedy to the husband and wife to have the marriage dissolved if even after sufficient afflux of time both of them find, that it is not possible for them to continue as husband and wife any further. Obviously, if both the parties agree, the decree of divorce can be

granted by mutual consent under section 13-B and if one of them fails to agree and does not want to oblige the other party by extending the requisite consent to the divorce, decree of divorce cannot be passed under section 13-B of the Act. For that, other provisions of the Act would have to be resorted to.

12. In this regard, it could be helpful to refer to para 645 of Halsbury's Laws of England, Fourth Edition, Volume 13, at page 323, under the heading "Consent : revocability", relevant part of which runs as under :

"The consent must continue to decree *nisi* and must be valid subsisting consent when the case is heard, remaining operative as the expression of the respondent's state of mind upto the moment when the decree is granted : *Beales v. Beales*, 1972(2) All England Reporter 67, at page 674."

13. Therefore, expressing our agreement with the judgments in Gurdip Singh Johar's case (*supra*) and Santosh Kumari's case (*supra*) we hold that the view taken by the learned Single Judge earlier in this case 1986-1(89) PLR 24 does not lay down the correct law and is hereby overruled.

14. However, the fact remains that the aforesaid judgment of the learned Single Judge which was *inter partes* was not challenged by way of appeal etc. either before the Letters Patent Bench or before the Supreme Court, and as a result thereof the same became final and binding upon the parties. It would be wholly immaterial that the view taken by the learned Single Judge ceased to hold the field and has been overruled. Even though it has ceased to be a good law, nevertheless it would be binding on the parties to the case especially when it was a remand order and in pursuance whereof the Court below has held the necessary inquiry and passed the decree keeping in view the directions issued by the learned Single Judge. For this purposition, the learned counsel for the respondent husband has placed reliance on the following judgments : *Satyadhyan Ghosal v. Smt. Deorajin Debi*<sup>7</sup>, *Mt. Anarjia v. Tengari Kabar*<sup>8</sup>, *Prabhu Halwai v. Fulchand Khandelwal*<sup>9</sup>, and *Sita Ram Goel v. Sukhnandi Dayal*<sup>10</sup>,

15. Consequently, we have no hesitation to hold that the earlier decision of the learned Single Judge in this very case in F.A.O. No. 100-M of 1985 (1986-1) 89 PLR 24 precludes the appellant from re-agitating the point covered by that decision and is binding on the appellant. The learned Trial Court has rightly granted the decree of divorce in favour of the respondent husband and the marriage between the parties rightly declared dissolved with effect from the date of the decree, that is, 17th December, 1985.

16. In the result, we dismiss the appeal. In the circumstances of the case, there is no order as to costs.

Appeal dismissed.

Cases Referred.

11986-1(89) PLR 24

21985(1) HLR 503

31986(1) HLR 620 (Raj)

41985(1) HLR 668 (Bom.) 6

51984 Mah. L.J. 308  
61985(1) HLR 280  
7AIR 1960 SC 941  
8AIR 1962 Pat 65  
9AIR 1969 Pat 16  
10AIR 1972 SC 1612