

RAJASTHAN HIGH COURT

Hemlata

Vs.

Praveen Kumar

Civil Misc. Appeal No. 4150 of 2006
(Shiv Kumar Sharma and Chatra Ram Jat, JJ.)

08.12.2006

JUDGEMENT

Shiv Kumar Sharma, J.

1. The marriage between appellant Hemlata alias Ritu and respondent Praveen Kumar Khandelwal, who are present in person took place on July 3, 2005 at Jaipur in accordance with Hindu Rites. Out of said wedlock a female child was born on April 26, 2006 but because of strained relations appellant came from Agra (in-laws house) to *Jaipur* on April 30, 2006 and started residing with her parents. Despite several efforts for reconciliation by the friends, relatives and well wishers, there was no improvement in the broken relationship and the spouses mutually agreed that the marriage should be dissolved. A joint petition therefore under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act' was filed in Family Court No. 1 Jaipur. Learned Family Court dismissed the petition on October 27, 2006. Hence this appeal.

2. Having closely scanned the material on record we notice that marriage has not been consummated for more than one year. Finding the appellant pregnant immediately after the marriage the respondent had broken up all the relations with the appellant and they started living separately under one roof till the appellant gave birth to female child and thereafter she on April 30, 2006 i.e. immediately after the child was born came to her parental house.

3. In *Kirtibhai Girdharbhai Patel v. Prafulaben Kiritbhai Patel*, ¹ it was held as under
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"The expression "have been living separately" in Section 13-B(1) of the Act

does not, necessarily, mean that spouses have to live in different places. What the expression would seem to require is that they must be living apart viz. not living with each other as 'husband' and 'wife'. It must be borne in mind that separation may be consensual or compulsory. The averment that the spouses, unfortunately, could not consummate the matrimonial relations since December, 1986, is not "ipse dixit" negated by the mere fact that they jointly went and then stayed under one roof, at London for sometime. There may be cases where the parties may have been compelled to stay in the same house and under same roof or premises and yet can be said to be living separately for want of consummation of matrimonial relations."

4. The underlying purport of Section 13-B of the Act is to find out that the spouses have not been able to live together because of their strained relations and they have mutually agreed for the dissolution of the marriage. These conditions are fulfilled in the instant matter.

5. In view of the aforesaid factual and legal position, the appeal is allowed and the impugned order of learned Family Court is set aside. Decree for divorce by mutual consent as contemplated under Section 13-B of the Act, by dissolving the marriage between the parties as prayed for in the joint petition, is hereby granted.

Appeal allowed.

Cases Referred.

1. AIR 1993 Guj 111