RAJASTHAN HIGH COURT

Girdhari Maheshwari

Vs.

NIL

Civil Misc. Appeal No. 518/2008
(Prakash Tatia and C.M. Totla, JJ.)

24.09.2008

JUDGMENT

Prakash Tatia, J.

1. The facts in brief as pleaded by both the appellants are that both the appellants fell in love with each other and without the consent of their parent entered into wedlock on 26.8.206 by following the rites of Arya Samaj. They could not live together for a single day (or night) as immediately after their marriage, the fact of marriage of the appellants came in knowledge of their parents and they did not accept this marriage. Because of above fact situation only, the appellants stated that the appellants do not want to live together nor they want to continue this marriage relation because they contacted the marriage because of their lack of understanding". They further pleaded that not only they did not live together for a single day (or night) after marriage, but they did not meet with each other for a single moment after the marriage. With these averments, the appellants, husband and wife filed present petition before the Family Court under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act of 1955) for obtaining mutual consent divorce decree. They pleaded that now both the parties-the appellants, after obtaining the divorce decree by mutual consent, shall live separate from each other and both the appellants want to marry with other persons, the person who has been chosen or suggested by their parents or family members, therefore, both the appellants submitted that for this their family members also agreed (or appellants agreed to wishes of their parents). With these pleadings, the appellants prayed that therefore, they are submitting this mutual consent divorce petition under Section 13-B of the Act of 1955 and appellants prayed that their matrimonial relation may be dissolved from today itself by dispensation with the requirement of six months waiting period as provided under Section 13-B of the Act of

1955, which restricts the court from passing the decree for divorce before period of six months from the date of presentation of petition under Section 13-B of the Act of 1955.

2. It appears from the copies of the divorce petition and application submitted for dispensing from waiting period of six months for divorce decree as required by sub-section (2) of Section 13-B and the copies of the affidavit of parties and there relatives, which makes it clear that the appellants submitted this petition for divorce by mutual consent as they may have been advised to do so by legal experts who gone through the various judgments, which according to appellants indicates that the requisite period of six months before which decree for divorce even by mutual consent can be granted by the court, has been considered and as per the learned counsel for the appellants, following the policy of liberalization in the matter of grant of divorce, the condition for waiting for six months after presentation of petition under Section 13-B of the Act of 1955 for mutual consent divorce is held not mandatory and this period can be dispensed with by the court. Therefore, the appellants who sought divorce forthwith, on the same day, from the court under Section 13-B of the Act of 1955 annexed an application for condonation of period of six months for grant of divorce and quoted the following authorities in support of their prayer for condoning the period of six months. These are the judgment referred in the application of the appellants dated 24th March, 2008, which was filed on the same date on which the divorce petition was filed under Section 13-B of the Act of 1955.

1. *Lalit Kumar @ Manga v. Sushma Sharma,* [1]
2. *K. Thiruvengadam & Anr v. Nil,* [2]
3. *In Re : Grandhi Venkata Chitti Abbai & Anr.,* [3]
4. *Manoja Kumari v. Bhasi, II* [4]
5. *Smt. Krishna Kumari v. Ashwani Kumar,*

3. The appellants submitted an affidavit of Smt. Kamla Devi - the mother of the appellant no. 2 (wife) and mother-in-law of the appellant no. 1 (husband), who reiterated in her affidavit what appellants stated in their divorce petition and in affidavits and she submitted that she (mother of the appellant no. 2) fixed the marriage of the appellant no. 2 on 18th April, 2008 and she already got the invitation card printed and also distributed the invitation card, therefore, she prayed that the divorce may be granted on the same day obviously by dispensing with the requirement of waiting period of two months under Section 13-B of the Act of 1955. In place of any of the parent of the appellant no.1, one Bhagwan Birla, the relative of the appellant

no.1 submitted a brief affidavit stating therein that appellant no.11 contacted marriage with appellant no.2 as per the procedure (rites) of Arya Samaj on 26.8.2006 and their living together is not possible and, therefore, decree for divorce may be granted. A joint motion application as required by sub-section (2) of Section 13-B of the Act of 1955 was also submitted along with the main petition for divorce under Section 13-B of the Act of 1955 by both the parties. The trial court vide order dated 15th April, 2008 after referring the judgments relied upon by the appellants, which are referred in their application for condonation of delay of six months period before passing the decree for divorce, rejected the appellants application vide impugned order dated 15.4.2008, hence, this appeal has been preferred by the appellants.

4. Learned counsel for the appellants submitted that requirement of waiting period of six months as provided under sub-section (2) of Section 13-B of the Act of 1955 is not mandatory as held by the various High Courts and further submitted that in view of the fact that marriage of the appellant no. 2 has already been fixed and wedding cards have already been got printed and then distributed, therefore, the divorce decree may be granted forthwith by dispensing with the "formality" of waiting period of six months under Section 13-B(3) of the Act of 1955. In view of the very peculiar facts of the case, we would like to look again into the law on marriage in Hindu community as both the parties are governed by the Hindu law. Before coming into force the Hindu Marriage Act, 1955, the subject of Hindu marriage the Hindus was governed by their personal law. The concept of divorce was not there in old Shastric Hindu Law. The view of some of the authors on subject of marriage are relevant, which we would like to refer hereunder:

5-6. S.K. Mitra in "Mitra on Hindu Law" Second Edition says that, the concept of Hindu Marriage has been described as a :

> "religious ceremony which results in a sacred and a holy union of man and wife, by which the wife is completely transplanted in the household of her husband, a new birth as a partner of her husband, becoming a part and parcel of the body of her husband. It has primordial importance in the contemplation of law. On the one hand, it signifies the spiritual union of man and woman, as husband and wife and on the other hand, it conceives of the basic principle of mutuality bringing two parties together with the forces of social milieu, developing since the age-old times of civilization. Several obligations, corresponding duties and relative injunctions seems to evolve out so as to hold this tie together and further support and supplement its existence and principles of morality have

obviously their interplay in this generic field. That subserves all the social virtues of personal love, mutual respect and best of the co-operation. The aims and objective of this institution is to achieve, by co-habitation of man and woman, the supreme values of Dharma (i.e., duty according to law and relation), Arth (economic effort and achievement), Kam (love and procreation) and Purusharth (i.e. best and noble actions and deeds). These are the material determinants of the concept of marriage enjoins and obliges both husband and wife to live together under the same roof and by common effort to achieve the goods of both. Marriage, thus, means mutuality and respects reciprocity."

"The bond of husband and wife enjoins upon them the respective obligations and duties, loyalty, love chastity and care are all the parts of the same bond on the social plane, that answer the character either of the husband or the wife. Negative injunctions are also ingrained in this relationship. The Hindu wife was enjoined to share the life and love, joys and sorrow, troubles and tribulations of her husband, to render selfless service, unstinted devotion and profound dedication to her husband (*Vaddeboyina Tulasamma v. Sesha Reddi,* "In the Vedic period, the sacredness of marriage tie was repeatedly declared; family ideal was decidedly high and it was often realized and after rendering about sacredness of marriage tie from Vedic period."

In Mayne's Hindu Law and Usage 14th Edition, the author says that :

"the wife on her marriage was at once given an honored position in the house. She was mistress in her husband's home and where she was the wife of the eldest son of the family, she exercised authority over her husband's brothers and his unmarried sisters. She was associated in all the religious offerings and rituals with her husband. As the old writers put it, "a woman is half her husband and completes him". Manu, in impressive verses, exhorted men to honor and respect women. "Women must be honored and adorned by their fathers, brothers, husbands, and brother-in-law who desire their own welfare. Where women are honored, there is the gods are pleased; but where they are not honored, no sacred rite yields rewards". "The husband receives his wife from the gods, he must always support her while she is faithful". "Let mutual fidelity continue until death. This may be considered as the summary of the highest law for husband and wife". Disputes between husband and wife were not allowed to be litigated either in the customary tribunals or in the king's courts. Neither bailment nor contracting of debt, neither bearing testimony for one another nor partition of property was allowed between them."

7. The concept of divorce was foreign to Hindu Marriage and after coming into force the Hindu Marriage Act, 1955, the sacramental nature of marriage may not have changed totally but certainly new Act on subject of Hindu Marriage has affected it. In Acharaya Shuklendra's "Hindu Law" for Modern Law Publications, 1st Edition published by A.L. Dawara it is said that:

> "After the enactment of the Hindu Marriage Act all though the Hindu Marriage is ceased to be wholly sacramental, section 7 of the said Act (Act of 1955) still provides that a Hindu Marriage shall be solemnized in accordance with the customary rights and ceremonies of either party thereto. Sub-section (2) of Section 7 further prescribes that where such rights and ceremonies include the "Saptapadi" the taking of seven steps by the bridegroom and the bride jointly before the sacred fire, the marriage becomes complete and binding when the seventh step is taken. Thus, Section 7 of the Hindu Marriage Act as has retained and has provided for continuance of the performance of the customary rites and make the same binding...."

8. Section 8 of the Hindu Marriage Act provides for provisions for registration of Hindu marriages under the Act of 1955. However, when the marriage had not been solemnized as provided by Section 7 of the Act of Hindu Marriage Act, registration under Section 8 by itself will not result in making the marriage complete and binding between the parties and held in *Krishna Pal v. Ashok Kumar* [7] However, essential for valid marriage is the following the customary rights and ceremonies of either party to the 4 marriage and "Saptapadi" necessary and essential ceremony for a valid marriage only in case where it is necessary customary rights of party.

9. It appears from the Hindu Marriage Act, 1955 that customary rights and ceremonies have been given due regard for a valid marriage among Hindus', but the parties to marriage started following the rites and ceremonies for performing marriage, but without there being same faith in the customary rites or in religious ceremonies and shockingly having no faith in institution of marriage much less to treating the marriage as sacrosanct relation between the husband and wife. Therefore, the word "marriage" is searching its own definition.

10. The fact of this case may be shocking for some persons, but at least they are relevant for consideration while considering the subject having foundation, the human relation. The appellants are major. The so called love developed between them, which persuaded them to take a irreversible step to marry and for that purpose, they opted to marry according to Arya Samaj rites, but without the consent and knowledge of their

parents. It appears that one of the essential ceremony of Kanyadan or offering blessing to the weds by the parents of marring persons is not as much essential as in other traditional marriages. Nothing has been pleaded by the appellants that before marring on 26.8.2006 for how many years, months or even days they were knowing each other. We may presume that they must not have married without knowing each other. They must have married in Arya Samaj because they could know that their parents will not agree for their marriage and they must have taken some time to take step for marriage against the wish of their parents. Then from the day on which, they married without knowledge of their parents, they were separated by their family members. From the facts mentioned in the petition, it is not clear under what circumstances, they accepted this position of living separately from each other from the day of their marriage. Whether it was as per wish of their family members and was under compulsion? The appellants pleaded that appellant no.1 was busy in his business and appellant no.2 started living with her mother and father and they did not meet thereafter with each other and straightway they filed this mutual consent divorce petition. It what appellants pleading is true then both the appellants, who loved each other and contracted scared marriage separated by their parents from the day of their marriage without there being any dispute between them. Since there is no contesting party, the court will have to accept what the two persons - appellants are saying in their petition! It may be the strong impression of the appellants that courts are bound to accept all improbable because two parties to litigation said so. The court can examine the parties under Order 10 Civil Procedure Code even in a matter where the defendant admits the claim of the plaintiff for grant of decree in favour of the plaintiff himself or in favor of the plaintiff and defendant both.

11. Since from the day of marriage, appellants did not live together and even did not met with each other, therefore, they were claimed the opportunity to reconcile for living together. If there are allegations of immorality in terms of sub-clause (i) of sub-section (1) of Section 13 or allegations of committing cruelty by spouse upon party to marriage or the spouse has deserted the other party to marriage or one of the party to marriage (Hindu) ceased to be Hindu by conversion to another religion or one is of incurably of unsound mind or was suffering continuously or intermittently from mental disorder and the other party cannot be expected to live with the respondent or the respondent is suffering from the virulent and incurable form of leprosy or venereal disease in a communicable form or has renounced the world by entering any religious order or has not been heard of as being alive for a period of seven years; or more; then in such grievous cases, the court is required to make efforts for re-conciliation before

passing the decree for divorce, but cases under Section 13-B of the Act of 1955, the couple is required to only satisfy the court that the husband and wife lived separately for a period of one year or more and that they have not been able to live together and that they have mutually agreed that marriage should be dissolved. In a grave case of grave immorality, in a case of total cruelty, in a case of total desertion, in a case when one of the party to the marriage is of unsound mind, incurable or suffering from mental disorder or diseases referred above, yet there cannot be divorce as one part has veto power against grant of divorce forthwith. In a case like present where on one days two young persons - a boy and girl decided to marry and married and then did not live together even on the day and night of the marriage and separated by others from the day of marriage and never contacted or allowed to contact each other and without any effort for re- conciliation by the court they decide to separate, the court is required to grant decree for divorce!

12. Normally, a blink may be sufficient for love but the marriages are not solemnized instantly even in the case of love marriages. If the parties to marriage are matured and capable to take decision and decides to marry with their free will then looking to the social aspect and if not religious aspect then they cannot undo what they have done without following a procedure, prescribed either by their customary law when permissible or in accordance with the procedure as prescribed by law. Each individual is beneficiary of society and, therefore, owes some duty towards society and bound to sacrifice his some freedom to some social structure of society in larger interest of society. If the facts as stated by the appellants are accepted to be true then views of the family members of the appellants prevailed over so called their independent decision to marry.

13. It appears that the appellants were taught the law on the subject of divorce and, therefore, they could, obviously with the help of legal advise received by them, referred the judgments mentioned above in their application and according to them there is a policy of "liberalization in the matter of grant of divorce" and to give effect to that policy the Section 13-B has been introduced in the Hindu Marriage Act, 1955. We are unable to subscribe to the view expressed by learned counsel for the appellants. We do not find any policy like policy of liberalization in the matter of grant of divorce even after enactment of Section 13-B of the Act of 1955. It is in fact one more indication to recognition of holly relations of marriage and that is why sub-section (2) has been put in Section 13-B of the Act of 1955, which is in total deviation from normal procedure adopted by the civil court. If the agreement or compromise is

lawfully not void or voidable under Indian Contract Act, 1872 and presented in any civil litigation by the parties to the litigation, the court is required to pass decree under sub-rule (3) of Order 23 Civil Procedure Code but sub- section (2) of Section 13-B of the Hindu Marriage Act, 1955, as a last hope of re-union of two parties to marriage placed a restriction against passing divorce decree forthwith on the basis of mere consent of the parties. The consent of parties to marriage otherwise was sufficient for passing the decree for divorce as per sub-section (1) of Section 13-B of the Act of 1955 as well as, as per Order 23 Civil Procedure Code. Sub-section (2) of Section 13-B requires a motion for obtaining divorce decree from both the parties, but it cannot be earlier than six months after the date of presentation of mutual consent divorce petition under sub-section (1) of Section 13-B. Subsection (2) very specifically provide that when such motion is presented before the court by both the parties after expiry of six months after the presentation of the petition under Section 13-B(1), the court shall pass the decree of divorce only on being satisfied after hearing the parties and at this stage, the court may hold such inquiry as the court may thinks fit and for that purpose, may look into the fact that marriage has been solemnized and that the averments in the petition are true. Normally, the decree under Section 13-B of divorce is granted without holding any inquiry and by recording satisfaction because of the averments made in the petition. The appellants as well as their parents, well or ill advised, believed that it gave them a right to dictate the court for dispensing with the waiting period of six months as provided in sub- section (2) of Section 13-B of the Act of 1955 and court is bound to grant decree forthwith and also on the same day when divorce petition is submitted under Section 13-B on dictate and command of the parties to marriage. This is apparent from the facts of the case. This is not the position even if it is held that condition for waiting for six months as provided by sub-section (2) of Section 13-B of Hindu Marriage Act is not mandatory. The appellants and their family members not only decided to move petition for grant of divorce decree, but before presentation of the petition under Section 13-B they decided to not only marry appellant no.2 with other person, but the period, which is required to be given for re-consideration to the decision of separating has been used for searching and contacting the second marriage with other and the appellants and appellant no.1's mother presumed that could will have to obey their dictate and command and they got the marriage invitation card printed after fixing the date of marriage as 18th April, 2008 in a matter where the petition under Section 13-B was filed on 24th March, 2008. The appellants benevolently gave less than one months time to court for deciding the divorce petition of the appellants. This type of petitions may come to the court, but

question is whether this was the intention for enacting Section 13-B of the Act of 1955 that anyone in one fine morning will enter into the court and will submit a petition and then ask the court to pass the decree on the same day because they want a decree of divorce. We are unable to accept this view.

14. It may be appropriate to look into all the judgments referred above :

15. In the case of *Smt. Krishna Kumari v. Ashwani Kumar, reported in* [8] the Punjab and Haryana High Court considered the provisions of Section 13-B(2) of the Act of 1955. In that case the appellant and the respondent married on 22nd Sept., 1990 as per the Hindu rites, but their marriage was not happy marriage. The wife submitted divorce petition with allegations of cruelty and demanding of dowry etc and alleged that she sustained injuries on her body as her husband pushed her on stairs and further, her husbands sister and her husband insulted the parents of the appellant wife. She also alleged that family members of her husband fanned the rumour that she had ran away. Thereafter, she was beaten mercilessly and, thereafter, she lodged a report to the police station, upon which a case under Section 406, 498 Indian Penal Code was registered. The divorce petition continued upto July, 1996 then parties submitted joint petition under Section 13-B of the Act of 1955 with application under Section 151 Civil Procedure Code for converting the proceedings under Section 13 of the Act of 1955 to proceedings under Section 13-B. They pleaded the settlement of dispute and submitted that in spite of re- conciliation proceedings even during appeal they could not re-concile to live together, therefore, the sought divorce by mutual consent. The parties statements were recorded by the court after the application referred above. The High Court allowed the petition of the parties to the marriage under Section 13-B after dispensing with the waiting period of six months. Even in above case, the learned Judge of the Punjab and Haryana High Court observed as under:-

> "25. Legislature has contemplated that if by moving such a petition they have knocked the door of the District Judge's Court, it is required that they should be given a reasonable time for reflection and rethinking to consider the pros and cons of divorce life, to take assistance of their relations and friends to make an attempt for their reconciliation. But if the spouses are litigating for the last many years, many futile attempts have already been made by both the parties to come under the same roof to lead a harmonious, lovable, peaceful martial life, then in the second inning of their litigation, if after being tried to these litigation bouts, they submit to the jurisdiction of the appellate court and make a humble prayer that they are living separately for long, they cannot live together, so by

their mutual consent they have decided to obtain divorce, if at that juncture, this relief is not granted to them, it means that soul of the provision is sacrificed for the form only.

26. Legislature has given this right to such spouses even when they are living separately for one year or more, but if for years together they are living separate, are not able to rejoin each other, virtually they have already shaped their marital tie, they only want a judicial recognition of that. If at that juncture they are made to wait for six months more, they will be forced to carry to pillory of marriage for long six months with no purpose. When they are fed up with their martial disputes and are trying to take their necks out of this noose, their freedom should not be denied to them."

16. In the present case, there was no opportunity for the appellants for rethinking the pros and cons of the divorced life nor they had access to each other which is most important for maintaining the relations or even for breaking the relation. In the case of Smt. Krishna Kumari (supra) the parties were litigating for more than four years and efforts for reconciliation failed at trial court stage and appellate court stage, therefore, their prayer for dispensing with the waiting period of six months was allowed.

17. The Andhra Pradesh High Court in the case of *Re : Grandhi Venkata Chitti Abbai & Anr reported in* [9] found that the parties to marriage entered into wedlock a decade back, they gave birth to two daughters who were of the age of 9 and 7 years. There were allegation of cruelty etc. There was litigation under Section 125 Criminal Procedure Code and another for regular maintenance and a criminal case under Section 498A was pending and in High Court both the parties were summoned to find out whether there is any last possibility of saving marriage and petitioner came to the court in almost hand over state and, thereafter, the court reached to the conclusion that there is no possibility of revival of marriage then the learned Single Judge of the Andhra Pradesh High Court observed as under :-

"....The entire concept of Hindu Law revolves round the principle that the marriage is not for lust but for procreation of the children who may ultimately be responsible to see that their parents to reach heaven but not hell and in that direction the entire legislation under the Hindu Law makes it obligatory on the part of the Courts to make last minute efforts to save the marriage at any cost. Keeping this principle in mind, I am of the view that the legislature fixed six months time to take divorce by mutual consent with a view that in the inter Regulation m period the tempers may come down and parties may realize the

consequences of separation more so the fate of the children and they may try to enter into a compromise if sufficient time lag is provided to think over before finally parting their ways...."

18. After observing as above, the Andhra Pradesh High Court observed that when once such a situation is ruled out then it will not serve any purpose in directing the parties to continue the agony father. Here the words "liberalized the process of divorce by mutual consent which was not there prior to the amendment" have been used. If these words read out of context then it may be interpreted to mean that there is any policy of liberalization in the matter of grant of divorce for Hindu marriages. The liberalized process of divorce is only for the situation which warrants for grant of divorce forthwith because of the facts of the case, which includes very many factors, which cannot be summarized as those factors depends upon facts of each case and some guideline can be from the judgment even referred by the appellants wherein the period of six months was dispensed with and one of which is to give an end to long dispute and to some future of the parties and the children may not suffer.

19. The Kerala High Court in the case of *Manoj Kumari v. Bhasi, reported in II* [10] after considering the observations of earlier judgment of Kerala High Court delivered in the case of *Sreelata v. Deepthy Kumar, reported in* [11] waived up the waiting period of six months under Section 13-B of the Act of 1955 in a case where there was prolonged litigation between the parties and welfare of the parties was in separation in the opinion of the High Court. Even in Sreelata's case, the Kerala High Court observed that court is satisfied that parties had sufficient time to think over their own future and have come to the definite conclusion that the martial relation has to be terminated then the court held that waiting period of six months cannot be insisted and in Sreelats's case also, the court held that "liberal view of the procedural requirement" and observed that the court should refrain from insisting on the waiting period of six months. Therefore, in Sreelata's as well as in the case of Manoj Kumari the facts were entirely different from the facts of this case.

20. The Madras High Court in the case of *K. Thiruvengadam & Anr. v. Nil reported in* [12] observed that the waiting period of six months under Section 13-B(2) of the Act of 1955 is not mandatory but only directory. However, in above case also, the Madras High Court clearly held that if there is no possibility of re-union then it is always open to court to decide about waiver of period of six months and also observed that "very purpose of liberalized concept of divorce by mutual consent will be frustrated." Obviously, it may happen in certain cases if the waiting period of six months is not

waived. In above case, the complete facts of the case are not given in detail and the Madras High Court finding support from other judgments held that requirement of waiting period of six months under Section 13-B(2) is not mandatory. It appears that in the case of K. Thiruvengadam the issue which we are considering that whether in all cases the court is bound to waive the waiting period was not under consideration.

21. In the case of *Sau. Sonali & Anr. v. Nil reported in II* [13] . the Bombay High Court observed that in such a case all efforts made for reconciliation were failed, wife was of the age of 29 years and husband was of the age of 33 years and their marriage took place on 31st May, 2001 and the parties are living separately since Jan., 2006 and sufficient period was with the parties to think and rethink and, thereafter, they failed to do so, then period of six months was waived in Sau. Sonali's case.

22. In *Anamika Shrivastava v. Vivek Shrevastava reported in* [14] the parties were agitating the matter before various forums and proceedings under Section 125(3) Criminal Procedure Code under Section 398A Indian Penal Code and various other cases were pending between the parties and both the parties were living separately for more than about three and half years and the court was of the view that there is no possibility of reconciliation and therefore, held that waiting period of six months under Section 13-B is directory in nature and in the given case, the application can be decided even without waiting for period of six months.

23. The issue before this Court is that whether there can be "policy of liberalization in the matter of granting divorce". With utmost respect, we are of the view that there can be policy for creating faith in the matrimonial relations rather than framing the policy for liberal or easy divorce. It may be a different story that how much the object of creating faith in matrimonial relations is achieved with the aid of law. It may be dangerous to deal with human relations in the same manner in which other (contractual) matters are dealt with. None other matter, accept the 'relation' in family is natural and marriage is also a natural relation and have social recognition of natural relation of two by the societies of living being and it has its foundation, love, faith, commitment and also surrender. In the matter of 'relation', there is no place for 'right' and 'obligation'. Rights and obligations in relations are inserted by law. And it is because of unruly and unethical behavior of human. The role of law in the matter of matrimonial relation, either for keeping the relation or breaking the relation is encroachment by law in the matter of 'relation' because of compulsion of unruly behavior of party to matrimonial relation. The object of matrimonial law is, to first see that those parties to marriage who may not have behaved befitting to their relationship

of marriage may understand to live with their spouse and if, in spite of bonds of love and affection, social restrictions against easy virtues, a party to marriage fails to behave and respect the matrimonial relation then and than only other party can break his/her relation from erring party to marriage. Obtaining divorce in Hindu law has not been made easy and it had its own aim and object. The irretrievable breakdown of the marriage is yet not ground for divorce. The issue of irretrievable breakdown of marriage is not a new issue but it came under consideration almost about 38 years ago before the Law Commission of India. (The law commission of India and 71st report, submitted on 7th April 1978)

24. Under the Hindu law, old or modern, marriage is not a civil contract which can be rescinded by party to marriage. It cannot be buried even by both the parties with their free will, wish and consent (before 13 B in H.M. Act). In contrast to free society, in the matter of matrimonial relations, in Hindu law, marriage is a sacred union of two heterogeneous for living as homogeneous. Under old Hindu law, there was no concept of divorce. Once marriage takes place it continues till the death of any of the party to marriage irrespective of fact whether they can live together or in fact they are living together or separate. The concept of divorce brought into the Hindu law by modern law. The Section 13 of the Hindu Marriage Act, 1955 prescribes the conditions in which either party to marriage after satisfying the court of law about the existence of the one or more of the grounds as mentioned in the sub clauses of Section 13, may obtain decree for divorce. The wrongdoers are not entitled to decree for divorce by virtue of Section 23(1)(a) of Hindu Marriage Act.1955. The irretrievable breakdown of the marriage yet has not been included as ground for divorce in spite of the fact that decades ago, about more than 37 years ago, issue of irretrievable breakdown of marriage was under consideration before the Law Commission of India. In our opinion, even in cases where divorce is sought on the ground of irretrievable breakdown of marriage, it maybe because of very many reasons and that may include fault of none, even in those cases the concept of separate living of the parties for considerable period before divorce cannot be granted is sine qua non. The concept which may allow marriage for short period and divorce for asking may have been accepted in some other laws particularly in western culture but yet has not been accepted in Hindu Law, either under old Hindu law or in modern Hindu law. Under modern Hindu law, under the Hindu marriage act 1955, even after making provision for divorce by mutual consent by enacting section 13-B, the legislature did not allow parties to marriage to seek divorce before one year of their marriage. Whether this waiting period of one year is add by legislation superfluously, uselessly and without

propose. We have no hesitation in answering it in negative. The obvious reason for keeping some time before marriage can be broken the opportunity must be given to the parties to the marriage who may instead of getting permanent and deep scar, they themselves may heel it. There may be some aberrations due to lack of understanding between the marrying persons and therefore, those natural wear and tear required to be given some time for their heeling. Even in the case of abrupt decision to marry, decision to break the matrimonial relation abruptly is impermissible, legally as well as morally. It maybe argued that in matrimonial relations even initial aberrations are graver than the injuries which may be suffered after some time to marriage. That argument was never accepted and it is provided statutory that no party to marriage can submit divorce petitions before expiry of one year from the date of marriage, unless there exists lawful reason for a petition for divorce before that statutory period. So is provided inspite of fact that several laws have been enacted to punish the offenders of matrimonial offences, after noticing that serious offences of not only cruelty causing mental torture or physical torture but burning of young bride. Restrictions against the divorce to reasonable extent is advantages not only to families or societies but it is advantageous to the married persons how want to separate and in the social setup in India, more advantageous to the women where second marriage of women is difficult as compared to second marriage of male. If opportunity is given to a man of getting rid off from matrimonial relations just for asking than there is more chances of exploitation of women and of committing of offences by the male against the women. In this respect if male and female are accepted as at par with each other than we shall be ignoring the ground realities of the social setup of for whose benefit the personal laws have been enacted by exercising powers under the Constitution of India. The matrimonial matters cannot be decided by remaining aloof from human psychology of the persons for whom laws have been enacted either by custom or by statute.

25. The law commission of India and 71st report, which was submitted to the Government on 7th April 1978 dealt with the said issue in brief. And this fact was considered by the Hon'ble Supreme Court in a detailed judgment in the case of *Naveen Kohli v. Neelu Kohli,* [15] and Honorable Supreme Court recommended union of India to consider seriously for bringing amendment in the Hindu Marriage Act, 1955 so as to incorporate irretrievable breakdown of marriage as a ground for grant of divorce. In the 71st report of the Law Commission of India" it is mentioned that during last 20 years or so, and now it would around 50 years, a very important question has engaged the attention of lawyers, social scientists and men of affairs, namely, should the grant of divorce be based on the fault of the party, or should it be based on the breakdown of

the marriage? The former is known as the matrimonial offence theory or fault theory. The latter has come to be known as the breakdown theory. "(Quoted from Naveen Kohli's case)

26. It will be worthwhile to mention here that the Hon'ble Apex while recommending the amendment in law to include the irretrievable breakdown of marriage as a ground for grant of divorce describe what is marriage as under :-

> "The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper- sensitive approach would be counter-productive to the institution of marriage. T he Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court."

27. In *Chetan Dass v. Kamla Devi, reported* [16] *in* this Court observed that :

> "Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well.
>
> The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society."

28. Two years have passed said recommendation yet law had not been changed so as to incorporate the irretrievable breakdown of marriage as ground for divorce in the Hindu Marriage Act, 1955. Be it is it maybe, even if irretrievable breakdown of marriage will be considered as ground for divorce even then basic ingredients for irretrievable breakdown of marriage cannot be less than living separate for considerable period. Divorce may not be available to married.

29. The present is not "a given case" wherein the trial court could have waived the waiting period under Section 13-B(2) of the Act of 1955.

30. In view of the above discussion since the appellants failed to show any reason for waiving with the period of six months before passing the decree for divorce even then it is held that the requirement of waiting period of six months as required by sub-section (2) of Section 13-B of the Hindu Marriage Act, 1955 is not mandatory and is directory even then the appellants are not entitled to any relief.

Consequently, the appeal of the appellants is dismissed.

Appeal dismissed.

Cases Referred.

1. 1994(3) RRR 642: 1995(2) CCC 164 (P&H)
2. 2008(2) RCR(Civil) 611 : 2008(1) Femi - Juris CC 134 (Mad)
3. AIR 1999 AP 91
4. (1998) DMC 694 Ker (DB)
5. 1997(4) RCR(Civil) 419 : 1997(1) CCC 392 (P&H)
6. AIR 1977 SC 1944)
7. 1982 HLR 478 (Cal)
8. 1997(1) Civil Court Cases 382 (P&H)
9. AIR 1999 AP 91
10. (1998) DMC 694 (DB)
11. 1998(1) KLT 195
12. (2008) Femi-Juris cc 134 (Mad)
13. (2007) DMC 844
14. (2008) 1 Femi- Juris CC 155 (MP)
15. 2006(2) RCR(Civil) 290 : [2006] RD-SC 135 (21 March 2006)
16. 2001(2) RCR(Civil) 641 : (2001) 4 SCC 250