

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
&
*THE HONOURABLE SMT JUSTICE KIRANMAYEE MANDAVA**

+C.M.A.No.651 OF 2007

% 27.06.2024

And:

.....Appellant

....Respondent.

!Counsel for the appellant : Sri V. Raghu

^Counsel for the respondent : Sri B. Venkatesh Nayak

<Gist:

>Head Note:

? Cases referred:

¹ 2019(4) ALT 162 (DB)

2.1985 SCC OnLine AP 98

3.2013 Supreme (Online) (KER) 8607

4.(2017) 8 SCC 746

5.(2023) 14 SCC 231

HIGH COURT OF ANDHRA PRADESH: AMARAVATI

* * * *

C.M.A.No.651 OF 2007

DATE OF JUDGMENT PRONOUNCED: 27.06.2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SMT JUSTICE KIRANMAYEE MANDAVA

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

KIRANMAYEE MANDAVA, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SMT JUSTICE KIRANMAYEE MANDAVA
C.M.A.No.651 OF 2007

JUDGMENT: per the Hon'ble Sri Justice Ravi Nath Tilhari:

Heard Sri V. Raghu, learned counsel for the appellant and Sri B. Venkatesh Nayak, learned counsel for the respondent.

2. The appellant is the husband of the respondent who filed O.P.No.444 of 2000 in the Family Court-cum-IV Additional District & Sessions Court at Vijayawada seeking to dissolve the marriage under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (for short, the Act, 1955). The marriage was solemnized on 29.08.1996 as per the caste custom and usage of both the parties. They were blessed with a female child. As per the appellant's pleadings, the wife went to her parents' house along with child in the year 1997 and since then she did not join the appellant except on one occasion on 31.08.1998. He pleaded mental agony, cruelty and that the wife did not join the company of the husband.

3. The respondent filed the counter denying the averments of the petition except the relationship between both parties. She

pleaded the appellant's intimacy with his colleague and his frequent visits. However, she pleaded that she was not willing for divorce and she was ready to join the husband. Any mental and physical cruelty by her was denied.

4. The appellant filed the rejoinder and denied any illegal intimacy with his colleague. The allegations made by the wife were said to be unfounded and intended to defame the husband, amounting to character assassination.

5. The appellant examined himself as P.W.1 and his friend L. Lakshmana Rao as P.W.2. C. Suresh, the Assistant Director, F.S.L, Hyderabad was examined as P.W.3. He also got marked Exs.A.1 to A.31 in his evidence.

6. The respondent examined herself as R.W.1, her father as R.W.2 and one P. Subba Rao as R.W.3. She also got marked Exs.B.1 to B.28.

7. The detailed description of those documents is mentioned under the judgment under appeal, in the appendix of evidence.

8. The learned Family Court framed the point for determination:

“Whether the petitioner is entitled for dissolution of marriage under Section 13(1)(ia) of the Act, 1955?”.

9. Referring to the evidence on record, finding was recorded that the behavior of the appellant with his colleague, caused mental agony to the respondent. The appellant could not take advantage of his own wrong and seek the relief of dissolution of marriage. It was recorded that the appellant moved with his colleague and there was long association objectionable in nature. The appellant failed to prove that the wife treated him with cruelty. So he was not entitled for dissolution of marriage. The O.P.No.444 of 2000 was dismissed by the judgment dated 27.07.2007.

10. Challenging the aforesaid judgment and decree the present appeal has been filed by the husband.

11. During pendency of the appeal, the parties settled their dispute and entered into a compromise inter alia to dissolve their marriage by mutual consent under Section 13B of the Act, 1955.

12. I.A.No.2 of 2024 has been filed by the appellant, along with the affidavits of the appellant, as also the respondent dated 21.12.2024. In both the affidavits, the appellant and the respondent have submitted that at the instance of elders and well wishers, they have come to a conclusion to put an end to their marriage. So, they intended to amend the relief sought in

C.M.A.No.651 of 2007 (the present appeal) to dissolve the marriage by mutual consent. Both parties have also filed compromise joint memo.

13. I.A.No.1 of 2024 has been filed by the appellant to amend the main appeal so as to convert it under Section 13B of the Act, 1955, inter alia on the same averments as in the affidavit in support of I.A.No.2 of 2024. They have stated that the appellant and the respondent are living separately since 1998 and did not contact each other since then. Their daughter has grown up and has also been married. There are no claims against each other and they are not claiming any claim or relief against each other neither presently nor would claim in future.

14. By order dated 13.02.2025, the compromise was directed to be verified by the Registrar (Judicial) of this Court and to submit the report after thorough verification. The compromise was verified, the parties were identified based on their identity on their Aadar cards in the presence of their respective counsel and a report has been placed on record dated 13.02.2025. On 20.02.2025, inter alia, it was submitted by the learned counsel for the respondent and the same was recorded in the Court's order that there was no provision made for permanent alimony for the

respondent wife as she was employed and was not willing for any permanent alimony.

15. Learned counsels for the parties submitted that the parties were living separately since 1998. After such a long time of separation, the parties were not willing to live together nor to lead any married life together. There were no chances of reconciliation. So, they decided to dissolve it by mutual consent under Section 13B of the Act, 1955, for which the applications and the compromise as aforesaid had been filed.

16. We have considered the submissions advanced and perused the material on record.

17. The points for consideration are:

- (a) Whether the petition filed under Section 13(1)(ia) of the Act, 1955 can be allowed to be converted into Divorce petition by mutual consent under Section 13-B of the Act, 1955? And
- (b) Whether on such conversion of the divorce petition under Section 13-B of the Act, the divorce by mutual consent can be granted in appeal waving off the cooling/statutory period?

ANALYSIS:

Points A & B:

18. Learned counsel for the appellant relied upon the judgment in the case of **Purnima Rani Kaijam vs. Balaji Ankem**¹, to contend that the application can be filed seeking to convert a petition for divorce in the petition by mutual consent under Section 13B of the Act, 1955.

19. In **Purnima Rani Kaijam** (supra), an application was filed under Section 13B of the Act, 1955 and since the parties therein had separated from each other for a long period of time, the statutory waiting period of six months was dispensed with. The marriage was dissolved and the applications filed therein as also the appeal was disposed of.

20. Learned counsel for the appellant further placed reliance in the case of **Gottipu Raminaidu vs. Gottipu Rajani** in C.M.A.No.665 of 2018 judgment dated 12.08.2022, in which a Coordinate Bench allowed to file application to convert the divorce petition under Section 13(1)(ia)(ib) of the Act, 1955 at the appeal stage into a petition under Section 13-B of the Act and in terms of the compromise between the parties as per the joint memo filed by them, the marriage was dissolved by mutual consent.

¹ 2019(4) ALT 162 (DB)

21. In *K. Omprakash v. K. Nalini*² the application of the husband under Section 13 of Hindu Marriage Act for dissolution of marriage was dismissed by the learned Civil Judge, City Civil Court, Hyderabad. He filed appeal. During pendency of the appeal, the parties entered into settlement. In appeal before the High Court, they filed the compromise memo to pass a decree for divorce declaring the marriage to be dissolved by mutual consent, ignoring the allegations and the counter allegations made by the parties against each other in the petition under Section 13. This Court framed the question, whether Section 13 B (2) of the Hindu Marriage Act under which divorce by mutual consent can be granted, permits the granting of such decree of divorce in the appeal, and held that Section 13-B (2) does not impose any fetter on the powers of the Court to grant instant decree of divorce. It was also observed and held that the time table fixed by Section 13-B (2) does not apply to an appellate Court. It was held that it could not have been the intention of Section 13-B (2) that the appellate Court should always drive the fighting parties to go through the purposeless forms of meaningless ceremony of petitioning again for consent divorce.

² 1985 SCC OnLine AP 98

22. Paragraphs 8 and 9 of **K. Omprakash** (supra) read as under:

“8. Section 13-B is introduced into the statute book by means of the Marriage Laws (Amendment) Act, 1976. It permits, for the first time, dissolution of a Hindu marriage by mutual consent of parties provided the parties have been living separately after their marriage 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 the marriage should be dissolved. Section 13-B radically altered the legal basis of a Hindu marriage by treating it as an ordinary form of contract which competent parties can enter into and put an end to like any other contract by mutual consent. Just as the parties can obtain a consent decree from the Courts under Order 23 Rule 3 C.P.C., so they can now under Section 13-B of the Hindu Marriage Act obtain a consent divorce. Sri S.V. Gupta in his *Hindu Law 3rd (1981) Edition*, Volume 2 page 300. commenting on this change, wrote:

“This is a very radical amendment as it enables divorce by consent. It also virtually puts a death -nail on the old of Hindu Law and Hindu morality that marriage is a sacrament and not a contract”.

However, a petition filed for divorce by consent under Section 13-B of the Hindu Marriage Act is required to be kept in abeyance for a minimum period of six months. This is in sharp contrast with a petition filed for divorce by consent under Special Marriage Act which is liable to be kept in abeyance at least for one year. This liberalising trend of law in the matter of granting divorce by consent cannot be lost sight of by Courts in interpreting that Section. But even, then Clause (2) of Section 13-B requires a Court not to pass a decree for divorce before six months of time lapses and after 18 months of time passes from the date of filing of such a petition for divorce by mutual consent. This is the last hope of the legislature for saving the marriage. The intention of the legislature is to provide a minimum period of six

months for re-thinking of the parties. If the above time-table fixed by Section 13-B (2) of the Hindu Marriage Act is applied to the present application made by the parties in this case on 12th July, 1985. We have to adjourn this case till January, 1986 for passing a decree for divorce under that Section, notwithstanding the fact that we are of the opinion that there is no chance of reconciliation between the parties who have been living away from each other for the last years and are to-day most anxious and ready to obtain such a decree here and now. That situation raises somewhat an important legal question as to the meaning which we should attribute to Section 13-B (2) of the Hindu Marriage Act. That question is whether the Legislature intended that Section 13-B (2) of the Hindu Marriage Act should be treated as a mandatory provision of law or the Legislature intended that Section to be treated merely as a directory provision of law. We have already noticed the language of Section 13-B (2). On first impressions it is not impossible to hold Section 13-B (2) to be mandatory. As a mandatory provision of law calls for its pound of flesh and requires to be complied strictly and it not being satisfied with offerings of more substantial compliance of its commands, we will have to adjourn this matter for six months and postpone the deliverance to the parties from this deadlock by that period of time. It is well settled proposition of law that a statutory provision, though mandatory in form can yet be treated as directory in substance. The question then arises whether there is anything in the text of this Section 13-B (2) or its context or purpose or design that calls for Section 13-B (2) being interpreted as directory ? In our opinion, there are weighty reasons warranting the reading of Section 13-B Clause (2) as directory. In that context we must first call attention to the design of the law expressed in its liberalising tendency of providing relief to parties on the basis of their mutual consent from their broken marriages. We must remember that this relief is granted by bringing about a profound alteration in the concept of a Hindu Marriage from that of a sacrament to a contract. By that alteration law has definitely

set its fact against forcible perpetuation of the status of matrimony between unwilling partners. Next we must note that this six month's time fixed by Section 13-B (2) is not a rule relating to the jurisdiction of the Courts to entertain a petition filed for divorce by consent. That question of jurisdiction is dealt with, by Section 13-B (1) of the Act and must be strictly complied with. Section 13-B (2) is a part of mere procedure. A procedural provision must be interpreted as a handmaid of justice in order to advance and further the interests of justice and not as a technical rule. Above all we should note that if Section 13 B (2) is read as a mandatory provision and as applicable to the exercise of matrimonial jurisdiction by the Appellate Courts also, Section 13-B (2) becomes totally unworkable. According to the literal reading of Section 13-B (2). the Courts cannot pass consent decree of divorce beyond 18 months period from the date of its filing, in the event such an application is filed by the parties and the Courts for some reason of human error or failure did not or could not dispose it of within the said period of 18 months, the literal reading of Section 13-B (2) prevents the Courts from granting that relief thereafter. Similarly if a petition for divorce by mutual consent is filed before the lower Court and was dismissed by the lower Court for some reason, the appellate Court would be powerless to grant that relief on the basis of the application filed in the lower Court because 18 months must have elapsed by the time the matter reached the appellate forum although the parties are still fighting relentlessly in the appellate Court. These considerations lead us to hold that it could not have been the intention of Section 13-B (2) that the appellate court should always drive the fighting parties to go through the purposeless forms of meaningless ceremony of petitioning again for consent divorce waiting and watching the completion of necessary number of revolutions of this mother earth around the unmoving sun.

9. For all the above reasons, we are of the opinion that Section 13-B (2) of the Hindu Marriage Act should be read as directory only. Section 13-B (2), no doubt cautions the Courts of its

duty to fight the last ditch battle to save the marriage; but when the Court is fully satisfied, on the basis of the proved facts, that in the interests of justice of the society and the individuals marriage tie should be put as under immediately. Section 13-B (2) does not impose any fetter on the powers of the Court to grant instant decree of divorce. At any rate, we are clearly of the opinion that the timetable fixed by Section 13-B(2) does not apply to an appellate Court. The great Telugu Poet Vemana said that the broken iron can be Joined together, but not broken, hearts. Parties have been living apart for long and their wedlock has now virtually become a deadlock. Chances of reunion had completely faded away. In these circumstances, we think it just and proper to grant a decree of divorce straightaway. Accordingly we pass a decree of divorce declaring the marriage between the appellant and the respondent as dissolved with immediate effect.”

23. So, it has been held in ***K. Omprakash*** (supra) that an application under Section 13-B of Hindu Marriage Act, 1955 is maintainable at the stage of appeal against the decree passed in divorce case and also that the waiting period under Section 13-B (2) is directory and not mandatory.

24. In ***R. Sraswathy Devi v. M. Manoharan***³, the Division Bench of the Kerala High Court held, that the legislative policy disclosed in the requirement that the Court should wait for six months is to give an opportunity to the parties to see if the marriage can be saved. However, in cases like the present one

³ 2013 Supreme (Online) (KER) 8607

where the parties are before the appellate Court after having fought a battle in the trial Court and where the Court is satisfied that the parties had sufficient time to think over their own future and have come to a definite conclusion that the marital relationship has to be terminated, the Court should take a liberal view of the procedural requirement and refrain from insisting on the waiting period of six months.

25. In **R. Sraswathy Devi** (supra), the parties were residing separately for more than 5 years, and the wife encashed the cheque given by the husband in terms of the compromise. So, it was held that the parties should not be subjected to a fresh waiting period of six months, and dispensed with the requirement of waiting period.

26. Paragraph-5 of **R. Sraswathy Devi** (supra) is as under:

“5. The surviving question is whether the prayer of the parties for dispensing with the six months waiting period is to be allowed. It is true that under Section 13B (1) of the Hindu Marriage Act, it is mandatory that once an application for divorce is filed, the Court should wait for six months period after presentation of the application. This is a case where the Family Court has already granted a decree of divorce by its order dated 6.12.2012 and by I.A.No.2160/2013, the said order of divorce is sought to be modified into one based on mutual consent.”

27. In ***Amardeep Singh v. Harveen Kaur***⁴ the question for consideration was whether the minimum period of six months stipulated under Section 13-B(2) of the Hindu Marriage Act, 1955 for a motion for passing decree of divorce on the basis of mutual consent is mandatory or can be relaxed in any exceptional situations. The Hon'ble Apex Court held that the period mentioned in Section 13-B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.

28. In ***Amardeep Singh*** (supra) the Hon'ble Apex Court held as under in paras-19 and 20:

“19. Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:

(i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;

(ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the

⁴ (2017) 8 SCC 746

Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

(iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.

20. Since we are of the view that the period mentioned in Section 13-B(2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.”

29. Recently, in ***Shilpa Sailesh v. Varun Sreenivasan***⁵ the Constitution Bench observed and held that the object of cooling off period is not to stretch the already disintegrated marriage, or to prolong the agony and misery of the parties when there are no chances of the marriage working out. However, the waiver is not to be given on mere asking, but on the Court being satisfied beyond doubt that the marriage has shattered beyond repair.

30. Paras-24, 25, 26 and 28 of ***Shilpa Sailesh*** (supra) read as under:

⁵ (2023) 14 SCC 231

“24. Section 13-B(1) of the Hindu Marriage Act states that a decree of divorce may be granted on a joint petition by the parties on fulfilment of the following conditions:

(a) the parties have been living separately for a period of one year or more before presentation of the petition;

(b) they have not been able to live together; and

(c) they have mutually agreed that the marriage should be dissolved.

25. Sub-section (2) to Section 13-B of the Hindu Marriage Act provides that after the first motion is passed, the couple/parties would have to move to the court with the second motion, if the petition is not withdrawn in the meanwhile, after six months and not later than eighteen months of the first motion. No action can be taken by the parties before the lapse of six months since the first motion. When the second motion is filed, the court is to make an inquiry, and on satisfaction that the averments made in the petition are true, a decree of divorce is granted. Clearly, the legislative intent behind incorporating sub-section (2) to Section 13-B of the Hindu Marriage Act is that the couple/party must have time to introspect and consider the decision to separate before the second motion is moved.

26. However, **there are cases of exceptional hardship, where after some years of acrimonious litigation and prolonged suffering, the parties, with a view to have a fresh start, jointly pray to the court to dissolve the marriage, and seek waiver of the need to move the second motion. On account of irreconcilable differences, allegations and aspersions made against each other and the family members, and in some cases multiple litigations including criminal cases, continuation of the marital relationship is an impossibility. The divorce is inevitable, and the cooling off period of six months, if at all, breeds misery and pain, without any gain and benefit. These are cases where the object and purpose behind sub-section (2) to Section 13-B of the Hindu Marriage Act to safeguard against hurried and hasty**

decisions are not in issue and question, and the procedural requirement to move the court with the second motion after a gap of six months acts as an impediment in the settlement. At times, payment of alimony and permanent lump sum maintenance gets delayed, while anxiety and suspicion remain. Here, the procedure should give way to a larger public and personal interest of the parties in ending the litigation(s), and the pain and sorrow effected, by passing a formal decree of divorce, as de facto the marriage had ended much earlier.

28. The time-gap is meant to enable the parties to cogitate, analyse and take a deliberated decision. The object of the cooling off period is not to stretch the already disintegrated marriage, or to prolong the agony and misery of the parties when there are no chances of the marriage working out. Therefore, once every effort has been made to salvage the marriage and there remains no possibility of reunion and cohabitation, the court is not powerless in enabling the parties to avail a better option, which is to grant divorce. The waiver is not to be given on mere asking, but on the court being satisfied beyond doubt that the marriage has shattered beyond repair. The judgment in *Amardeep Singh* [*Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746 : (2017) 4 SCC (Civ) 804 : (2017) 3 SCC (Cri) 505] refers to several questions that the court would ask before passing an order one way or the other. However, this judgment proceeds on the interpretation of Section 13-B(2) of the Hindu Marriage Act, and does not examine whether this Court can take on record a settlement agreement and grant divorce by mutual consent under Section 13-B of the Hindu Marriage Act in exercise of the power under Article 142(1) of the Constitution of India.”

31. Thus, considered and in view of the aforesaid judgments, we hold on Point-A that the petition for divorce filed under Section 13(1)(ia) of the Act, 1955 can be allowed to be converted into

divorce petition by mutual consent under Section 13-B of the Act, 1955, even at the appellate stage. On Point-B, we hold that the provisions of Section 13-B(2) of the Act, 1955 providing for cooling off period is directory and in the facts and circumstances of a case, the statutory period can be waived of.

32. After considering the submissions advanced jointly from both the sides that there are no chances of reconciliation and reunion, the parties are living separately since 1998 and in spite of the fact that the petition filed by the husband for divorce was dismissed still they are not able to reunite, as also that they have entered into a compromise and filed applications for divorce by mutual consent, we are of the view that there is no purpose, under the circumstances of this case, directing the parties to wait for six months cooling off period, to oblivate and continue their miseries. When the marriage has been broken down and the parties are living separately for the last more than 27 years, we allow the application to amend the petition for divorce under Section 13(1)(ia) of the Act to make it under Section 13-B by mutual consent, we are satisfied in the facts of the present case that the marriage has shattered beyond repair. The cooling off period of six months deserves to be waived. The petition for

divorce deserves to be allowed by granting divorce by mutual consent, waiving of the waiting/cooling period, of six months, under Section 13B(2) of the Hindu Marriage Act, 1955.

33. I.A.Nos.1 and 2 of 2024 stands allowed.

34. The Appeal is allowed. The judgment and decree dated 27.07.2007, rejecting the divorce petition in OP.No.444 of 2000 by the learned Principal Judge, Family Court-cum-IV Additional District & Sessions Judge, Vijayawada, is set aside. The marriage between the appellant and the respondent is dissolved under Section 13-B of the Hindu Marriage Act with effect from the date of this judgment.

35. The I.A.Nos.1 and 2 of 2024 with affidavits and the report of the Registrar (Judicial) of this Court dated 13.02.2025, shall form part of the judgment and decree in this appeal.

36. No order as to costs.

Consequently, the Miscellaneous Petitions, if any, pending shall also stand closed.

RAVI NATH TILHARI,J

KIRANMAYEE MANDAVA,J

Date:27.06.2025. L.R copy to be marked B/o.(Gk).

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SMT JUSTICE KIRANMAYEE MANDAVA

C.M.A.No.651 OF 2007

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Gk.