

IN THE COURT OF JUDGE, FAMILY COURT, BHUBANESWAR.

Present: Shri Pravakar Mishra, OSJS (S.B),
Judge, Family Court, Bhubaneswar.

Civil Proceeding No. 465 of 2012
(Under Section 13 (B) of Hindu Marriage Act, 1955)

Sri Sauvagya Sandeep Barik, aged about 31 years,
S/o- Sri (Dr.) Srikanta Barik,
Resident of B-707, Daffodils Apartment, Dwarka,
Sector-6, New Delhi. Petitioner No.1

And

Smt. Sailasuta Devi, aged about 26 years,
W/o- Sri Sauvagya Sandeep Barik,
D/o- Sri Rabi Ranjan Mallick,
Resident of HIG-391, K-5, Kalinga Vihar,
Patrapada, Bhubaneswar-751019,
P.S.-Tomando, Dist-Khurda. Petitioner No.2

Date of argument : 16.07.2014

Date of judgment : 26.07.2014

J U D G M E N T

The petitioners have filed this application Under Section 13(B) of the Hindu Marriage Act, 1955 (hereinafter be referred as the Act) for divorce by mutual consent.

2. The case of the petitioners are that their marriage was solemnized on 03.02.2012. Although the parties, themselves have stated that the application under section 13(B) of the Hindu Marriage Act, 1955 has been made of their free will and without any coercion and their temperamental in-compatibility to each other has rendered it impossible to live as husband

and wife altogether yet has not motioned/stated since when they have been living separately. Be that as it may, they have further stated that whatever dowry items were there have been exchanged between them. The wife has stated that she has no claim against the husband whatsoever. Both of them stated that a decree of divorce by mutual consent may be granted.

2. Both the petitioners in their affidavit evidence vouch-safed the contentions as made in the application. It has been stated in the application, nay, in the affidavit evidence of the parties that their marriage took place on 03.02.2012 but no where it has been stated either in the application or in the affidavit evidence that since when they have been staying separately. The application u/s. 13 (B) is presented in the court on 20.11.2012.

3. A joint petition for dissolution of marriage by a decree of divorce can be filed by both the parties before the court on the ground that they have been living separately for a period of one year or more and they have not been able to live together and that they have mutually agreed that the marriage shall be dissolved. Subsection 2 of section 13-B of the Act provides that such application shall be considered by the court not earlier than six months after the date of presentation of the petition and after six months the court shall consider such application and pass appropriate order in accordance with law. Hence, the requirements of law under this section are:-

(i) There must be a petition jointly presented to the court by both the parties to the marriage.

(ii) The grounds for dissolution of marriage by a decree of divorce must clearly and categorically show:

- (a) That parties have been living separately for a period of one year or more before presentation of the petition.
- (b) That they have not been able to live together and
- (c) That they have mutually agreed that marriage may be dissolved.

Besides the above, requirement of law is that the court before passing a decree for dissolution of marriage under section 13(B) of the Act must make an enquiry into the correctness of the grounds set out in the application and thereafter the court must be satisfied about the correctness of the statement made in the joint petition. The claim of the both the parties as in the joint petition already referred to and in their statement as P.W. 1 and P.W. 2, it stands established that they have not been living separately for a period of more than one year on the date of presentation of the joint petition.

4. The question of jurisdiction is dealt with by section 13-B (i) which provides for the parties to present a joint petition for dissolution of marriage by mutual consent on the ground that they have been living separately for one year or more. When the law prescribes the manner for exercising jurisdiction and confers power for that purpose, it has to be exercised in the same manner or not at all. The legislature, in its wisdom, has consciously provided the minimum and maximum waiting period during which alone a decree for divorce by mutual consent can be passed. The apparent object behind providing this period is to allow time to the spouses to reconsider their decision and finally make up their mind. It also enables the court to satisfy itself that the “consent” is free from extraneous influence and is also not tainted with any “collusion”. In *Anil Kumar Jain Vrs. Maya Jain* reported in 2009 (8) SCJ 83 it has been laid down that neither High Court nor Civil Court can pass orders before the period prescribed under the provisions of the Act or on the grounds not provided for in section 13 or 13

(B) of the Act. That being the present position of law as one of the ingredients of sub section 1 of Section 13 (B) having since been flicked off or not being satisfied, the joint petition for mutual divorce is liable to be dismissed and in fact, I did the same. Hence ordered;-

O R D E R

The joint petition for dissolution of marriage by mutual consent stands dismissed.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 26th day of July, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Witnesses examined

P.W.1 Sri Sauvagya Sandeep Barik

P.W.2 Smt. Sailasuta Devi

List of documents admitted by petitioners:

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.