

SUPREME COURT POWER TO DISSOLVE MARRIAGES ON THE GROUND OF IRRETRIEVABLE BREAKDOWN

CASE TITLE:- SHILPA SAILESH VS VARUN SREENIVASAN

INTRODUCTION

Section 13-B of Hindu Marriage Act provides for divorce by mutual consent and requires parties to wait for 6 months before moving the second motion in the Court. Whether or not, under Article 142 of the Indian Constitution, the Supreme Court can waive off this 6-month statutory period, was a question of contention since 2014, when Shilpa Sailesh and Varun Sreenivasan moved to the Hon'ble Supreme Court for obtaining divorce by mutual consent, seeking waiver on ground of irretrievable breakdown of marriage.

The parties asked for deciding upon the case for delivering 'complete justice' as envisaged under Article 142 of the Constitution. On the 1st of May 2023, the Constitutional Bench of the Supreme Court consisting of Justices S.K. Kaul, Sanjiv Khanna, Abhay S. Oka, Vikram Nath, and J.K. Maheshwari, passed its guidelines as were referred to them in the **Shipla Sailesh v. Varun Sreenivasan** case.

This case raised three issues to be decided by the court. The decision of the Court would now be used as a guiding stick in further cases brought before the Supreme Court under Article 13B of the Hindu Marriage Act, 1955.

FACTS OF THE CASE

In 2014, the parties, Mrs. Shilpa and Mr. Varun, moved to the Hon'ble Supreme Court in order to obtain divorce by mutual consent under Section 13-B of Hindu Marriage Act, 1955, citing that their marriage has broken down irretrievably. In 2015, the Supreme Court granted the divorce by using powers under Article 142 of

the constitution on the ground of irretrievable breakdown of marriage as the marriage was a dead marriage.

While disposing of this case, the Supreme Court observed that thousands of such cases have been pending before various Family Courts and High Courts. Hence, a need was felt to lay down certain guidelines and also to specify scope of Supreme Court's power under Article 142 of the Constitution.

The case was sent to a two-judge bench of the Supreme Court and amicus curae were appointed to decide upon the issue. The case was again referred to a larger bench of the Supreme Court for better consideration. On 20th September, 2022, bench headed by Justice Sanjay Kishan Kaul heard the matter and on 1st May 2023, the bench finally passed its landmark judgment laying down the scope of Supreme Court's power under Article 142 and other related points of contention were clarified by the Constitutional Bench.

ISSUE RAISED

The following three issues were raised and brought before the hon'ble Supreme Court for adjudication:

1. What is the scope and ambit of power and jurisdiction of the Hon'ble Supreme Court under Article 142(1) of the Constitution of India?
2. While exercising its inherent power under this Article, can the Supreme Court waive off 6 months statutory period prescribed under Section 13-B of the Hindu Marriage Act, 1955? Also, whether or not can it quash other related proceedings under CrPC, IPC, Domestic Violence Act, etc, and if yes, in what circumstances can the Supreme Court do so?
3. When one of the parties to the divorce stands in opposition to the divorce petition, can the Supreme Court grant divorce on the ground of irretrievable breakdown of marriage while exercising its power under Article 142(1)?

The SCOPE AND AMBIT OF SUPREME COURT'S POWER UNDER ARTICLE 142

The first issue raised before the Hon'ble Supreme Court was regarding the scope of Article 142(1) and the jurisdiction of the Supreme Court under it. While deliberating upon it, the Supreme Court first referred to the case of **M Siddiqui v. Mahant Suresh Das** . The Court gave wide scope to the phrase 'as is necessary for doing complete justice', to include such power of equity to answer the problems where the strict application of the procedural law would not yield a 'just outcome', and also in such cases where the positive law is silent or has left some void.

Further, the power is wide enough to pass an order in modification or alteration of a proposition regarding which the positive law is specific and clear, provided that order is in the interest of justice. Hence, 'to do complete justice' is the guiding principle of Article 142(1).

Further, the Hon'ble Court referred to the *Union Carbide Corporation v. Union of India* , to distinguish the power of the Supreme Court under Article 142, with that Civil Courts and High Courts as under Section 151 of CPC and Section 482 of CrPC respectively, providing these Courts with power to make and pass such orders as may be necessary to meet the 'ends of justice' and to prevent abuse of procedure of court.

Such power is exercisable in such areas where CPC and CrPC are sub silentio, hence, the Court can devise such procedure as necessary to regulate future proceedings. But, the power conferred under Article 142(1) on High Court is not a replication of this power, as the court is not bound by the rules of procedure and can interfere in such areas where provisions have already been laid down, if satisfied that departure from the said provisions would be necessary to do 'complete justice', but this power is fettered by restraint of consideration of 'general and specific public policy'.

The Court additionally referred to **Supreme Court Bar Association v. Union of**

India, where it was held that order, as opposed to the statutory provisions, can be passed only to 'balance the equities' between the claims of parties concerned by 'ironing out the creases in cause of matter' brought before the court, hence, conferring unfettered jurisdiction in 'cause of matter', which covers almost every kind of proceeding including civil, criminal, final or interlocutory proceedings. The only fetter is that the judgment should not violate 'specific and general provisions of public policy'.

Hence, the powers under Article 142(1) are wide enough for the Court to act per its discretion to meet the 'ends of justice', the power being much wider than Civil Courts and the High Courts under relevant sections of CPC and CrPC.

SUPREME COURT'S POWER REGARDING WAIVER OF STATUTORY PROVISION AND QUASHING OF RELATED PROCEEDINGS

The issue raised before the Hon'ble Supreme Court was whether while exercising power under Article 142(1), can the Court set aside the prescribed period of 6 months under Section 13 B of the Hindu Marriage Act, 1955, and can the Court alongside quash other proceedings in connection to the divorce and settlement. The Court also had to decide that in which circumstances the Court can exercise such powers.

Concerning the 6 months cooling period under 13 B of Hindu Marriage Act, 1955, which has been provided to prevent 'impulsive and heedless dissolution of marriage, allows tempers to cool down, anger to dissipate, and gives the spouses time to forgive and forget', the Court reiterated with approval, the guidelines laid in **Amardeep Singh v. Harveen Kaur** case, holding that the said cooling period was discretionary and could be waived off as was not mandatory in nature.

But such waiver has to be granted if there is no chance of reconciliation, the parties have been living separately for long enough, all efforts to salvage the dead marriage have failed, and after considering the following circumstances and questions:

- i. If the required period of 1 year under sub-clause (1) and six months before presenting the second motion under sub-clause (2) of Section 13B has already been completed before the first motion is presented.

- ii. If the efforts under CPC concerning mediation or conciliation or under Family Courts Act for parties to reunite have proved to be futile and further no chances are there of success in the same direction.
- iii. If the parties have already settled issues like alimony, custody of children, etc.
- iv. If the waiting periods, if not waived, would prolong the agony.

Hence, if the above conditions have been analysed and the Court deems fit, as per its discretion, the waiver can be granted, and an application regarding the same can be presented before the Hon'ble Court a week after the first motion has been presented. Hence, in such cases where the marriage has proved to be 'completely unworkable, emotionally dead, beyond repair, and irreversibly broken down', there is no use in stretching it for 6 more months.

Next, considering whether the Court can quash other proceedings related to the one pending before the Supreme Court, the Court held that power under Article 136 and Article 142(1) provides that a decree passed by the Court is executable throughout the territory of India, and it is obvious that before approaching the Supreme Court, the parties must have filed suits and attended proceeding in various Civil Courts, High Courts, Family Courts, trial courts and judicial forums seeking appropriate relief, there must have been closure and disposal of multiple cases, which makes the pleas cumbersome by adding to the list of legal formalities. Considering the 'cause of justice', the multiplicity of litigations blocks the way of settlement, after which the parties could start their life afresh either separately or together.

Hence, to preserve the cause of justice, the Supreme Court has been endowed with a duty to ensure that the matrimonial disputes are settled timely and amicably without undue delays which add to the suffering and prolong the agony of the parties, for such reasons the Supreme Court is empowered to quash the other proceedings concerned with the divorce proceedings, which are pending in other courts and judicial forums.

SUPREME COURT'S POWER TO GRANT DIVORCE WITH CONSENT OF JUST ONE SPOUSE

The third issue raised the Hon'ble Supreme Court was whether while exercising power under Article 142(1), can the court grant divorce, when there is a complete breakdown of marriage, inspite of the other spouse opposing the prayer.

The court isn't fettered by the provisions of Section 13-B of HMA to grant a decree of divorce by mutual consent on a joint application, on fulfilment of the conditions of the Section, and if the court is convinced that the decree of divorce should be granted.

The Court referred to *Ashok Hurra v. Rupa Bipin Zaveri* case, where it was held that if no useful purpose, both emotional and practical, would be served in postponing the agony of the parties or their marriage, then the same should be put to a halt. The court, therefore, exercised the power under Article 142(1) to grant a decree of divorce.

The judges opined that too much reliance on fault as a ground of divorce encourages matrimonial offenses, and aggravates the ongoing rift between the parties. After strenuous efforts for reconciliation being made, if the court finds the separation inevitable, divorce should be granted. The court should take decision conducive to the interests of both parties.

The basic essence of Section 13(1) (i-a) of the Hindu Marriage Act is that no spouse should be subjected to mental cruelty, which can make their life a misery. These rules of procedure must give way to 'complete justice in a cause of matter'. The Fault Theory can be relaxed to a certain degree by the court to do complete justice while exercising power under Article 142(1), as expounded in the aforementioned judgments.

Now referring to the **Munish Kakkar v. Nidhi Kakkar** case, where the parties had been engaged in multifarious litigations, including divorce proceedings, for almost two decades, yet opposed divorce by mutual consent. On recognizing the

futility of the broken-down marriage, the court exercised power under Article 142(1) to do 'complete justice' to the parties and granted divorce even when no such divorce was asked for.

The court held that grant of divorce on the ground of 'irretrievable breakdown of marriage' is a discretionary power of the court which has to be used sparingly with care and caution, and can't be claimed as a 'matter of right'. While granting divorce on this ground, the court should be fully satisfied that marriage is unworkable and beyond reconciliation.

The parties should not be permitted to file a writ petition under Article 32, or for that matter under Article 226 before the High Court, and seek divorce on the ground of irretrievable breakdown of marriage. The reason for the same is that the parties shouldn't be allowed to circumvent the procedure of approaching the superior tribunal/forum for redressal, by resorting to writ jurisdiction.

Secondly, relief under Article 32 is sought for the enforcement of fundamental rights. Also, the judicial orders passed by the courts aren't amenable to correction under Article 32. Therefore, a party cannot file a writ petition under Article 32 of the Constitution of India and seek relief of dissolution of marriage directly from this Court.

Hence, the Hon'ble Supreme Court under Article 142(1) is empowered to dissolve the marriage on the ground of Irretrievable Breakdown, and to do 'complete justice' it can do so even when the other spouse does not consent to the same.

CASE ANALYSIS

- Firstly, before the arrival of the judgement of *Shilpa Sailesh V. Varun Sreenivasan*, the scope and ambit of power of the Hon'ble SC under Article 142(1) wasn't very clear. Although, the same issue had been talked about in various earlier judgements still there were many lacunas in the same. In ***Shilpa Sailesh V. Varun Sreenivasan***, the Hon'ble SC considered

various other judgements such as that of **M. Siddiq (Dead) Through Legal Representatives (Ram Janmabhumi Temple Case) v. Mahant Suresh Das, I.C. Golak Nath v. State of Punjab, Union Carbide Corporation v. Union of India**, etc. and held that this court can depart from the procedure as well as substantive laws, as long as the decision laid down is in consonance with the general and specific public policy. While deciding whether to exercise discretion, the court must consider the substantive provisions enacted rather than ignoring them altogether. This power is to be exercised in a 'cause or matter'.

- Secondly, before the coming of this judgement, the position in law wasn't clear that whether a party can directly approach the honourable Supreme Court on the ground of irretrievable breakdown of marriage by filing a writ petition under Article 32 of the Constitution. The SC reiterated its view laid down in the case of Poonam v. Sumit Tanwar, that such an attempt of approaching the apex court directly should be spurned.

The Hon'ble SC said that the remedy of a person aggrieved by the decision of a competent judicial forum is to approach the superior tribunal/forum for redressal of his/her grievance. The parties shouldn't be permitted to circumvent the procedure by resorting to writ jurisdiction under Article 32 or Article 226. More importantly, the Hon'ble SC said that the relief under Article 32 of the Constitution of India can be sought to enforce the rights conferred by Part III of the Constitution of India, and on the proof of infringement thereof. Judicial orders passed by the court in, or in relation to, the proceedings pending before it, are not amenable to correction under Article 32 of the Constitution of India.

Therefore, a party cannot file a writ petition under Article 32 of the Constitution of India and seek relief of dissolution of marriage directly from this Court. Due to this decision, the Apex Court would be saved from multifarious litigations which eventually leads to wastage of its valuable time.

- Thirdly, the Hon'ble SC held that, in view of settlement between the parties, it has the discretion to dissolve the marriage by passing a decree of divorce by mutual consent, without being bound by the procedural requirement to move the second motion. This power should be exercised with care and caution, keeping in mind the factors stated in Amardeep Singh (supra) and Amit Kumar (supra).

The multiplicity of litigations can restrict and block solutions, as a settlement has to be holistic and comprehensive, given that the objective and purpose is to enable the parties to cohabit and live together, or if they decide to part ways, to have a new beginning and settle down to live peacefully. Therefore, the Apex Court can also, in exercise of power under Article 142(1) of the Constitution of India, quash and set aside other proceedings and orders, including criminal proceedings.

- Lastly, as far as the question that whether this Court can grant divorce in exercise of power under Article 142(1) when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer is concerned, the SC answered in affirmative. This power is discretionary in nature which is exercised to do 'complete justice' to the parties wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. This provision has enabled the Apex Court to put end to the suffering of the parties without giving due consideration to further futile attempts for reconciliation.

CONCLUSION

The Supreme Court through this pronouncement has crystallized and organized the cases dealing with divorce by mutual consent under Hindu Marriage Act that are brought before the Supreme Court and has also specified the extent to which it can exercise its power under Article 142(1) of the Indian Constitution.

Hence, the decision of the Court can be summarised as follows:

Regarding the scope and ambit of power of the Supreme Court under Article 142(1) of the Constitution, the Supreme Court has unlimited jurisdiction as to do complete justice in coat of matter brought before it, the only fetter being that such exercise should not be opposed to the provisions of 'general and specific public policy'.

Then comes the question of waiver of 6-months statutory periods under Section 13-B of HMA, 1955, and the Court said that it can waive off the period if the marriage is completely dead and has broken down irretrievably and, regarding the question of quashing other proceedings pending before various courts, for which the Court said that it has power to quash such other proceeding in the interest of justice and to put to and end the suffering of the parties.