

Supreme Court of India

Nikhil Kumar

vs

Rupali Kumar on 27 April, 2016

Bench: Kurian Joseph, Rohinton Fali Nariman

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 4490 OF 2016

(Arising out of SLP (c) No.12161 of 2016)

Citation: AIR 2016 SC 2163:2016(4) ALLMR 472 SC,(2016)

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2. The appellant and respondent have filed the petition under [Section 13- B\(1\)](#) of the [Hindu Marriage Act](#), 1955 before the Family Court (Principal Judge, Family Court, Tiz Hazari District Courts), Delhi. The parties were married on 07.02.2011 according to the customary rights. It is submitted that they have not been able to work out their marriage as husband and wife since day one. For the last around five years, most of the time they have been living separately and their marriage reached a breaking point more than a year back. Both the parties, after giving serious thought on the entire consequences of their decision, have taken a conscious decision to part and accordingly they have filed a petition before the Family Court for divorce on mutual consent on 29.03.2016. The Family Court granted the First Motion on 01.04.2016 and now, the matter is posted in the month of October, 2016.

3. The respondent has made a travel plan to move to New York on 29.04.2016 seeking a job and resettlement in life, after a long period of traumatic experiences of her married life as stated in the affidavit.

4. In the above circumstances, the appellant has filed the present appeal praying for waving the six months' waiting period required under [Section 13-B\(2\)](#) of the Hindu Marriage Act, 1955, invoking our jurisdiction under [Article 136](#) read with [Article 142](#) of the Constitution of India.

5. The respondent has appeared in person. She was directed to file an affidavit before this Court. The respondent in the affidavit has endorsed the submission that they were not happy ever since their marriage in 2011. It is stated that with the set-back of a broken marriage, the respondent needs a change in environment and thus, she has proposed to move to New York and it would be difficult for her to get back to India after six months or even in the near future. It is further stated that both of them have realized the consequences of their decision and they have taken the decision out of their free will and without any undue influence or coercion.

6. Both the parties have appeared before the Court. The appellant was born in the year 1984, and is graduate in commerce. He is working as senior manager in a private firm. The respondent was born in the year 1982 and she also is a graduate.

7. The respondent is scheduled to leave the country by 29.04.2016 and it is not possible for her to return to India within six months or in the near future, it is submitted.

8. Having regard to the educational background of the appellant as well as the respondent, and the entire facts and circumstances, we feel that it is a very peculiar situation where this Court should invoke its jurisdiction under [Article 142](#) of the Constitution of India for doing complete justice between the parties. We do so.

9. In the above circumstances, HMA No.272 of 2016 filed on 29.03.2016 before the Ld. Principal Judge, Family Courts, Tiz Hazari District Courts, Delhi under [Section 13-B\(1\)](#) of the Hindu Marriage Act, 1955 is allowed. The statutory period of six months is waived and the marriage between the parties is dissolved.

10. The Registry to communicate a copy of this judgment to the Family Court forthwith.

11. The appeal is allowed as above. No order as to costs.

.....J (KURIAN JOSEPH)

.....J (ROHINTON FALI NARIMAN)

NEW DELHI

APRIL 27, 2016