

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
TRANSFER PETITION (C) No.899 OF 2007

Neeti Malviya ... Petitioner

VERSUS

Rakesh Malviya ...  
Respondent

O R D E R

This transfer petition has been filed by the petitioner-wife, seeking transfer of the Divorce Petition M.C. No.2168 of 2006 titled as Rakesh Malviya Vs. Neeti Malviya, filed by the respondent-husband, from the court of Additional Principal Judge, Family Court, Bangalore (Karnataka) to the Family Court, Hoshangabad (Madhya Pradesh).

2. After issuance of notice on 7th December 2007, efforts were made on various occasions to bring about a comprehensive settlement of the matrimonial discord between the parties. On 6th September 2008, the parties agreed for mediation. Accordingly, the parties were referred to the Delhi High Court Mediation Centre. Ultimately, in proceedings before the Supreme Court Lok Adalat held on 25th April 2009, it was reported that the parties had arrived at a settlement. The settlement agreement dated 24th April 2009 was taken on

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record. The relevant portion of the order passed on 25th April 2009 is extracted below:

"...One of the terms so agreed upon is that the husband is to pay to the wife an amount of Rupees sixty five lakhs on or before 28th February, 2010. It is now agreed before us that the said amount of Rupees sixty five lakhs shall be deposited in this Court as per the schedule of dates mentioned in the agreement. The amount, so deposited, shall be put in a Fixed Deposit Receipt for a period upto 1st May, 2010.

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It is also agreed that when full amount in terms of the agreement is deposited, the parties shall, immediately thereafter, move a joint application for grant of divorce by mutual consent. On the passing of the decree for divorce, the amount deposited in this Court shall be released to Neeti without any delay."

3. The matter remained pending for some time but the parties continued to discharge their obligations under the terms of settlement and when the case came up for hearing on 29 th January 2010, it was stated that the respondent-husband shall deposit the last instalment of money, in terms of the settlement, by 28 th February 2009, which was done. However, when the matter came up for final orders on 10th May 2010, learned counsel for the parties sought time to go through the two judgments of this Court in Manish Goel Vs. Rohini Goell and Smt. Poonam Vs. Sumit Tanwar<sup>2</sup>, and assist the Court on the question whether the period

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2010 (2) SCALE 332  
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JT 2010 (3) SC 259

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of second motion in terms of sub-section (2) of Section 13-B of the Hindu Marriage Act, 1955 (for short "the Act") can be waived or reduced by this Court.

4. We have heard learned counsel for both the parties.
5. Sub-section (1) of Section 13-B of the Act is the enabling Section for presenting a petition for dissolution of marriage by a decree of divorce by mutual consent, on the ground that the parties have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved. Sub-section (2) of Section 13-B of the Act provides the procedural steps that are required to be taken once the petition for divorce by mutual consent has been filed and six months have expired from the date of presentation of the petition before the Court. The language of sub-section (2) is unambiguous and provides that on the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.
6. As already stated, the language of the said provision is clear and prima facie admits of no departure from the time frame laid down

therein, i.e. the second motion under the said sub-section cannot be made earlier than six months after the date of presentation of the petition under sub-section (1) of Section 13-B of the Act.

7. The question with which we are concerned in the present petition

is whether in view of the settlement arrived at between the

parties, a decree of divorce by mutual consent can be granted by

this Court without waiting for the statutory period of six

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months in terms of Section 13-B(2) of the Act.

In other words,

the question for consideration is whether or not this Court can

reduce or waive of the statutory period of six months, as

stipulated in the said provision?

8. At the outset, we may note that in several cases this Court has been invoking its extraordinary powers under Article 142 of the Constitution of India and passing a decree of divorce by mutual consent without waiting for the statutory period of six months to expire. As a matter of fact, even the family courts in some States, following the ratio of the decisions or the directions by their respective High Courts, have been reducing the period of second motion when they were convinced that there was no possibility whatsoever of the spouses coming back together again and granting decree of divorce by mutual consent in terms of the settlement arrived at between the parties in order to give quietus to all the litigations pending between them.

9. In fact, in Anjana Kishore Vs. Puneet Kishore<sup>3</sup>, a Bench of three Judges of this Court, while hearing a transfer petition, invoked

its jurisdiction under Article 142 of the Constitution and

directed the parties to file a joint petition before the family

court under Section 13-B of the Act, for grant of decree of

divorce by mutual consent, along with a copy of the terms of

compromise arrived at between the parties.

The Court further

permitted the family court to consider dispensing with the need

of waiting for expiry of a period of six months as required by

sub-section (2) of Section 13-B of the Act and pass final orders

on the petition within such time as it deems fit.

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(2002) 10 SCC 194

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10. The issue with regard to the jurisdiction of the High Court and the matrimonial court to reduce or waive of the period of second

motion in terms of sub-section (2) of Section 13-B of the Act

fell for consideration of this Court in Anil Kumar Jain Vs. Maya

Jain<sup>4</sup>, though in a different context.

Taking note of a number

of earlier cases where decree of divorce by mutual consent had been granted by this Court without waiting for the expiry of statutory period of six months, it was held that neither the civil courts nor even the High Courts can pass orders before the period prescribed in Section 13-B(2) of the Act has expired. The Court opined that it is only this Court, in exercise of its extraordinary powers under Article 142 of the Constitution, that can grant relief to the parties without even waiting for statutory period of six months stipulated in Section 13-B of the Act.

11. However, recently in Manish Goel (supra) and Smt. Poonam (supra), this Court while taking note of the decisions in Anjana Kishore (supra) and Anil Kumar Jain (supra) has also referred to various other judgments of this Court taking a contrary view and has observed that under Article 142 of the Constitution, this Court cannot altogether ignore the substantive provisions of the statute and pass orders concerning an issue which can be settled only through a mechanism

(2009) 10 SCC 415

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prescribed in a statute. The Court has also observed that power under Article 142 of the Constitution is not to be exercised in a case where there is no basis in law which can form an edifice for building up a structure. Reference has also been made to the decision of the Constitution Bench in Prem Chand Garg Vs. Excise Commissioner, U.P., Allahabad<sup>5</sup>, wherein it was held that an order which this Court can make in order to do complete justice between the parties, cannot be inconsistent with the substantive provisions of the relevant statutory laws. Inter alia, observing that no court has competence either to issue a direction contrary to law or to direct an authority to act in contravention of the statutory provisions, the Court finally summarised the law on the issue before us to the effect

that in exercise of power under Article 142 of the Constitution,  
this Court 'generally' does not pass an order either  
in  
contravention of or ignoring the statutory provisions  
or  
exercise power merely on sympathetic grounds.

12. Although it can be gathered from the use of the word 'generally' in  
para 15 and the last paragraph of the judgment where the Court  
did not find the case before it to be a fit case for exercise of its  
extra-ordinary jurisdiction under Article 142 of the Constitution,  
that both the said decisions do not altogether rule out the exercise  
of extraordinary jurisdiction by this Court under Article 142 of the  
Constitution, yet we feel that in the light of certain observations in  
the said decisions, particularly in Manish Goel (supra), coupled  
with the fact that the decision in Anjana Kishore (supra) was  
rendered by a Bench of three learned Judges of this Court, it  
would be appropriate to refer the matter to a Bench of three

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AIR 1963 SC 996

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Judges in order to have a clear ruling on the issue for future  
guidance.

13. Accordingly, we refer the following question for the  
consideration of a Bench of three Hon'ble Judges:-

(I) Whether the period prescribed in sub-section (2) of  
Section 13-B of the Hindu Marriage Act, 1955 can be  
waived or reduced by this Court in exercise of its  
jurisdiction under Article 142 of the Constitution?

14. We direct the Registry to place the papers of this case  
before the Hon'ble Chief Justice of India for appropriate  
orders.

15. It is agreed between the parties that in the meanwhile, they  
will file a joint petition under Section 13-B of the Act for  
grant of divorce by mutual consent in terms of the settlement  
within two weeks from today. We are informed that the fixed  
deposit for the amount deposited by the respondent in terms  
of the settlement will be maturing for payment in the first  
week of August, 2010. As and when the said fixed deposit  
matures, a sum of Rupees two lacs and fifty thousand shall be  
paid to the petitioner by means of a bank draft payable at  
Itarsi (Madhya Pradesh). The balance amount along with  
interest accrued thereon shall be put in a fresh fixed



As and when the fixed deposit matures, a sum of

..2/-

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Rupees two lacs and fifty thousand shall be paid to the petitioner by means of a bank draft payable at Itarsi (Madhya Pradesh). The balance amount along with interest accrued thereon shall be put in a fresh fixed deposit for a period of six months.

List in the month of November, 2010.

[ Charanjeet Kaur ]  
Court Master

[ Pushap Lata Bhardwaj ]  
Asstt. Registrar

[ Signed reportable order is placed on the file ]