

## R. SRINIVAS KUMAR VS R. SHAMETHA

**COURT:** Supreme Court of India

**CITATION:** (2019) 9 SCC 409

**DECIDED ON:** 4 October 2019

**BENCH:** M.R. Shah

**LAW APPLIED:** [The Constitution of India, 1950](#)

### **FACTS OF THE CASE:**

The appellant got married to the respondent on 9 May 1993. There were differences of opinions between the said parties, and the appellant-husband claimed that cruelty was meted out of him. It was observed in several instances that the respondent-wife had stayed at her parental house up to 1997. Subsequently, a divorce petition was filed by the appellant-husband before the Family Court at Hyderabad in 1999 claiming a decree of divorce against the respondent under Section 13(1)<sup>1</sup> (ia)<sup>2</sup> and (ib)<sup>3</sup> of the Hindu Marriage Act, 1955.

The Family Court however, dismissed the petition marking that the appellant had failed to prove cruelty by the respondent, and subsequently refused to pass a decree of divorce on the ground of irretrievable breakdown of marriage.

The appellant thereafter preferred an appeal against the order passed by the Family Court on 4 September 2003 before the Hon'ble High Court of Judicature at Hyderabad. The appeal sought

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<sup>1</sup> Section 13 of the Hindu Marriage Act, 1955 states about Divorce

<sup>2</sup> Section 13(1) (ia) states that Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty.

<sup>3</sup> Section 13(1) (ib) states that Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

for the same decree of divorce as in the Family Court. The Hon'ble High Court however, dismissed the said appeal, and hence, being aggrieved by the impugned Judgment and order dated 6 December 2012, the appellant had preferred this appeal at the Hon'ble Supreme Court of India.

**ISSUES RAISED:**

Whether it was just to allow the divorce appeal on the ground of irretrievable breakdown of marriage, and dissolve the marriage by invoking Article 142 of the Constitution of India, 1950?

**RULE APPLIED:**

[Article 142 of the Constitution of India, 1950:](#)

*Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc.*

*(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.*

*(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.*

## **ANALYSIS OF THE CASE:**

### **Contentions of the appellant:**

Strenuous efforts were made by the appellants to upset the findings recorded by the lower courts on 'cruelty' as a ground of divorce laid under Section 13(1) (ia) of the Hindu Marriage Act, 1955. Alternatively, it was vehemently submitted that the appellant and the respondent were residing distinctly since past 22 years, and thus, it was asserted by the appellant that there existed no chance of survival of marriage, and it was broken beyond repair. That being said, it was concluded that it was impossible to save the marriage. Hence, the appellant prayed before the Hon'ble Supreme Court to dissolve the marriage on the ground of irretrievable breakdown of marriage by exercising powers under Article 142<sup>4</sup> of the Constitution of India, 1950, and do justice to both the parties.

### **Contentions of the respondent:**

On the contrary, the respondents opposed fervently to the claims of the appellants, submitting that such a case to dissolve the marriage between the concerned parties on the above-mentioned ground falls out of ambit of the powers exercised by the Hon'ble Supreme Court under Article 142 of the Indian Constitution.

It was further claimed that the ground of irretrievable breakdown of marriage cannot be granted if either of the parties has not consented or is not willing to such dissolution. The ground can be granted only with proper consent from both the concerned parties, which was clearly missing in this particular case.

### **OBSERVATIONS:**

The Hon'ble Supreme Court held no dispute in the fact that the couples were residing distinctly since a long period of time, i.e. 22 years. It also felt that the efforts to save the marriage have failed repeatedly, and no possibility for a reunion can be viewed owing to the conflicted relations between the concerned parties.

The Hon'ble Court while referring to [Hitesh Bhatnagar v. Deepa Bhatnagar](#)<sup>5</sup> observed that the Court can dissolve a marriage on the grounds of irretrievable breaking down, only when it is satisfied that all possible efforts have been made to save the relationship and is convinced

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<sup>4</sup> Article 142 of the Constitution of India.

<sup>5</sup> (2011) 5 SCC 234

beyond any reasonable doubt that there exist no chance and possibility of the marriage surviving the test of time, and the matrimonial bond is broken beyond repair.

Placing further regard to the case of [Naveen Kohli v. Neelu Kohli](#)<sup>6</sup>, the Hon'ble Court observed that once the bond of marriage is broken, it would be unfair, unjust, and unrealistic for law to not take cognizance of the same. It would further be injurious and harmful to the society and the interests of the parties concerned. It can be fairly deduced and inferred that a matrimonial bond is broken beyond repair when there has been a long period of continuous separation. The marriage thereafter becomes a legal fiction supported by a legal tie. In cases where required, refusal of law to sever that tie fails to serve the sanctity of marriage and shows scant regard for feelings and emotions of the parties.

Additionally, it is obligatory for the Court and all concerned, to encourage the maintenance of the matrimonial status, for as far and as long and whenever possible. However, if a marriage is dead totally, nothing can be gained by trying to force the parties to keep their ties forever to a marriage, which in fact ceases to exist. A similar view has been expressed explicitly in the case of [Samar Ghosh v. Jaya Ghosh](#)<sup>7</sup>.

In a similar set of facts and circumstances, the Hon'ble Supreme Court in the case of [Sukhendu Das v. Rita Mukherjee](#)<sup>8</sup> directed to dissolve the marriage on the same ground as in the present case, i.e. irretrievable breakdown of marriage in exercise of its powers under Article 142 of the Constitution of India, 1950.

Submission by the respondent that Article 142 of the Constitution of India cannot be exercised in a case of lack of mutual consent by both parties, in dissolving a marriage on the ground of irretrievable breakdown of marriage holds no substance and has to be discarded. This is due to the fact that if both parties consented to divorce, and agree for permanent separation, both the parties shall certainly move to a competent Court for a decree of divorce by mutual consent. Powers bestowed under Article 142 of the Indian Constitution to do justice to both the parties shall only be exercised in cases where there exists a dispute in consent, as in the present circumstance.

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<sup>6</sup> (2006) 4 SCC 558

<sup>7</sup> (2007) 4 SCC 511

<sup>8</sup> (2017) 9 SCC 632

**CONCLUSION:**

The Hon'ble Supreme Court taking cognizance to the facts and circumstance of the present case allowed the divorce filed by the appellants for dissolution of marriage. The Court while exercising its power under Article 142 of the Indian Constitution directed the marriage to be dissolved. While protecting the interest of the respondent, The Court directed the appellant to compensate her by way of lump sum permanent alimony, which was decided to be quantified at Rupees Twenty Lakhs, via demand draft in a span of eight weeks. The Hon'ble Supreme Court was just to exercise its inherent powers laid in Article 142 of the Constitution such as the present case as the Court observed that the marriage has been emotionally dead, totally unworkable, beyond salvage and broken down irretrievable.



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