



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.39609 of 2021

(An application under Articles 226 & 227 of the Constitution of India).

Doyel Dey

...

Petitioner

-versus-

***The Judge, Family Court,
Balasore & Another***

...

Opposite Parties

For Petitioner : Ms. S. Jena, Advocate

***For Opposite Parties : Mr. S. Pattanaik,
Advocate (OP No.2)***

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING & JUDGMENT:03.01.2025(ORAL)

G. Satapathy, J.

1. This writ petition by the petitioner-wife prays to set aside the impugned judgment dated 22.11.2021 passed by the learned Judge, Family Court, Balasore in C.P. No. 532 of 2020 dissolving the marriage between the petitioner and OP No.2 U/S. 13-B of Hindu Marriage Act, 1955 on mutual consent.

2. The facts not in dispute are that the petitioner & OP No.2 are husband and wife and their marriage was solemnized on 12.02.2018 as per the caste



custom of the parties and they resided together for some time and due to dissension, a petition was filed by both the parties for grant of mutual divorce U/S. 13-B of the Hindu Marriage Act. Accordingly, conciliation was done, but before passing of the decree on mutual consent, the writ petitioner withdrew her consent unilaterally on 18.11.2021. However, the learned trial Court notwithstanding to the withdrawal of consent by the writ petitioner, has passed the impugned judgment dissolving the marriage of the parties on mutual consent. Being aggrieved, the writ petitioner has challenged such judgment before this Court.

3. In the course of hearing, on being prayed, the name of Mr. Satyajit Mohapatra & associates stand deleted from the cause list as brief as counsels for OP No.2. However, Ms. Sailabala Jena, learned counsel appearing for the petitioner by relying upon the decision passed by the Apex Court in ***Smt. Sureshta Devi vs. Om Prakash; AIR (1992) SC 1904***



submits that the Court cannot pass decree on mutual consent U/S.13-B of Hindu Marriage Act, if any of the spouses withdraws his/her consent before passing of the decree of divorce, but notwithstanding to withdrawal of such consent by the writ-petitioner, the learned trial Court in this case has granted decree of divorce on mutual consent which is erroneous and liable to be set aside.

On the other hand, Mr. Sanjay Pattanaik, learned counsel appearing for OP No. 2 submits that not only the conciliation between the parties was over, but also the argument was over when the writ petitioner withdrew her consent and judgment was reserved and therefore, the writ petitioner cannot withdraw her consent unilaterally to deprive the OP No.2 from his legitimate right of getting a divorce on mutual consent. He further submits that the impugned judgment does not suffer from any illegality as the same has been passed on sound appreciation of evidence and analysis of materials on record.



4. After having considered the rival submissions upon perusal of record, there appears no dispute with regard to filing of a joint petition by both husband and wife for grant of mutual divorce U/S. 13-B of the Hindu Marriage Act on mutual consent, but it is also not in dispute that the writ petitioner-cum-wife withdrew her consent unilaterally on 18.11.2021 just 04 days before the passing of decree of dissolution of marriage between the parties. The position of law in this regard has been well explained and settled by the Apex Court in **Sureshta Devi** (supra) wherein the Apex Court at paragraph-13 has held thus:-

*13. Sub-section (2) requires the Court to hear the parties which means both the parties if one of the parties at that stage saying that **"I have withdrawn my consent", or "I am not a willing party to the divorce, the Court cannot pass a decree of divorce by mutual consent.** If the Court is held to have the power to make a decree solely based on the initial petition, it negates the whole idea of mutuality and consent for divorce. Mutual consent to the divorce is a sine qua non for passing a decree for divorce U/S.13-B. **Mutual consent should continue till the divorce decree is passed.** It is a positive requirement for the court to pass a decree*



of divorce. "The consent must continue to decree nisi and must be valid subsisting consent when the case is heard".

5. The factual position which is not in dispute in this case is that the writ petitioner withdrew her consent on 18.11.2021, but the judgment was passed on 22.11.2021, however, the law as has been explained by the Apex Court reveals that any of the spouse can withdraw consent unilaterally and consent being the essence of grant of decree of divorce U/S. 13-B of the Hindu Marriage Act, no decree of divorce can be passed U/S.13-B of Hindu Marriage Act, 1955, if any of the parties withdraws such consent just passing of decree. In this case, although the writ petitioner has withdrawn her consent just 04 days before the passing of decree, but the learned trial Court notwithstanding to such fact has dissolved the marriage between the parties on mutual consent U/S. 13-B of the Hindu Marriage Act, which is not only erroneous, but also unsustainable in the eye of law and liable to be set aside.



6. In the result, the writ petition by the petitioner stands allowed on contest, but in the circumstance there is no order as to costs. Consequently, the judgment dated 22.11.2021 passed by the learned Judge, Family Court, Balasore in C.P. No. 532 of 2020 is, hereby, set aside and the matter is remitted back for fresh disposal in accordance with law.

Taking into account the pendency of the proceeding in C.P. No. 532 of 2020, the learned trial Court is hereby requested to dispose of the case within a period of six months from the date of production of copy of this judgment.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 3rd day of January, 2025/S.Sasmal*

Signature Not Verified

Digitally Signed
Signed by: SUBHASHMITA SASMAL
Reason: Authentication
Location: High Court of Orissa
Date: 06-Jan-2025 10:34:49

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