

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) No.1400/2008**

% **Date of Decision: 22.12.2008**

Nikhil Gupta .... Petitioner  
Through Mr.Jaideep Gupta, Sr. Advocate with  
Mr.Sanjay Gupta and Mr.Sumit Bansal,  
Advocates.

Versus

Smt.Shruti Gupta .... Respondent  
Through Nemo.

**CORAM:**  
**HON'BLE MR. JUSTICE ANIL KUMAR**

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|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | NO  |
| 3. | Whether the judgment should be reported in the Digest?                | NO  |

**ANIL KUMAR, J.**

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1. The petitioner impugns the order dated 1<sup>st</sup> December, 2008 dismissing the petition under Section 13(B)(1) of Hindu Marriage Act for dissolution of marriage between the petitioner and respondent on the ground of mutual consent as the respondent was allowed to withdraw her consent to the second motion.

2. The petitioner and the respondent were married on 11<sup>th</sup> July, 2007. Before the expiry of one year a petition for decree of divorce by

mutual consent was filed on 13<sup>th</sup> May, 2008 along with an application for waiver of statutory period of one year.

3. Though the first motion petition with an application for waiver of one year period which was filed on 13<sup>th</sup> May, 2008 was not heard and decided, it appears that even the second motion petition was prepared which is annexure P5 to the petition which reveals that the second motion petition was also signed on 13<sup>th</sup> May, 2008 and even the affidavit of the petitioner was attested on the same date. From the photocopy of the affidavit of the respondent it is not apparent as to on which date the said affidavit was got attested by the respondent, however, it is clear that the affidavit was signed on 13<sup>th</sup> May, 2008.

4. The first motion petition came up for hearing on 16<sup>th</sup> May, 2008 on which date it was allowed holding that the marriage of the petitioner and the respondent cannot be dissolved immediately in view of the provisions of Section 13(B)(2) of the Act. The parties were given liberty to move their second motion petition within the statutory period in accordance with law.

5. Despite this order dated 16<sup>th</sup> May, 2008 the second motion petition which was registered as HMA no.256/2008 was taken up on the same date and the exemption from appearance of petitioner No.2

was requested and the matter was adjourned to 22<sup>nd</sup> May, 2008. Even on 22<sup>nd</sup> May, 2008 respondent did not appear and the matter was adjourned to 24<sup>th</sup> May, 2008. On 24<sup>th</sup> May, 2008 the counsel for the respondent submitted that she is not interested in divorce and shall be filing an application for withdrawal of her consent and the matter was adjourned to 7<sup>th</sup> July, 2008 and thereafter the matter was adjourned to 26<sup>th</sup> July, 2008. An application dated 18<sup>th</sup> July, 2008 was filed on behalf of respondent seeking withdrawal of her consent.

6. The learned Trial Court after considering all the facts and circumstances and the law allowed the respondent to withdraw her consent to second motion petition by order dated 1<sup>st</sup> December, 2008 which is impugned on the ground that there was no force, threat or undue influence on the respondent.

7. The whole procedure adopted by the petitioner in filing the second motion petition is irregular. Before the expiry of one year statutory period the petition under Section 13B first motion was prepared and got signed on 13<sup>th</sup> May, 2008 and even before any order being passed on the first motion, the second motion petition had also been got signed from the respondent on 13<sup>th</sup> May, 2008. The signing of first motion and second motion on the same date even before the first motion was allowed is contrary to Section 13B of Hindu Marriage Act.

8. The learned Additional District Judge has noted these facts and has held that there was no impediment on the part of the respondent to withdraw her consent to the second motion petition. The learned Judge has also noted that even in the first motion petition nothing was stated as to how much alimony has been settled or paid and in what mode that amount has been paid to the respondent. This is also apparent that after the first motion was granted on 16<sup>th</sup> May, 2008, the respondent did not appear before the Court for the second motion though the same was taken on the same date. While allowing the first motion the Court had categorically recorded that marriage of the petitioner and the respondent cannot be dissolved immediately. Rather petitioner and the respondent were advised to live together and patch up their differences in due course of time.

9. The learned Additional District Judge while disposing of the first motion petition had also observed that the second motion petition be filed within the statutory period in accordance with law and in the circumstances the second motion which was signed on 13<sup>th</sup> May, 2008 could not be in compliance with the order dated 16<sup>th</sup> May, 2008 passed on the first motion petition.

10. In the circumstances, there is no manifest error or such jurisdictional error which will entail interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India against the order dated 1<sup>st</sup> December, 2008 dismissing the petition under Section 13B of Hindu Marriage Act for dissolution of marriage by mutual consent. The petition is without any merit and is dismissed in limini.

11. The petitioner has also sought quashing of proceedings initiated by the respondent before the Crime against Women Cell in file No.3397/2008. In the petition impugning the order dated 1<sup>st</sup> December, 2008 dismissing the petition under Section 13B of Hindu Marriage Act for dissolution of marriage by mutual consent, the quashing of proceedings initiated before the Crime against Women Cell cannot be taken nor any such grounds have been made out in the petition.

The petition is, therefore, dismissed.

**December 22, 2008**  
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**ANIL KUMAR**  
(Vacation Judge)