



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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IRRETRIEVABLE BREAKDOWN AND JUDICIAL DISCRETION:

SHILPA SAILESH V. VARUN SREENIVASAN

~Priyanka Pillay

CASE DETAILS

Name Of Case: Shilpa Sailesh v. Varun Sreenivasan (2023) 14 SCC 231

Bench: Sanjay Kishan Kaul, Sanjiv Khanna, Abhay Shreeniwas Oka, Vikram Nath, and J.K. Maheshwari, JJ

Jurisdiction: The Hon'ble Supreme Court of India

INTRODUCTION

Marriage is a sacred union that legalizes two people's cohabitation and living together in a harmonious unity. It is a legally and socially recognized institution that embodies companionship, mutual respect, and shared responsibility between the parties. However, when essential ingredients of marriage like mutual trust, emotional well-being, and respect are violated, it leads to an irretrievable breakdown of marriage; the continuation of such a relationship may result in hardship and instability. Divorce, in such cases, functions as the best legal mechanism to formally dissolve a marriage that has ceased to fulfil its foundational rationale. While often perceived as a last resort, divorce upholds individual dignity and personal autonomy by allowing parties to exit an untenable marital relationship.¹

¹ Santosh & Amir Khan, Recent Trend of Divorce in India, J. Advances & Scholarly Rsch. in Allied Educ. (2019).

*Shilpa Sailesh v. Varun Sreenivasan (2023)*² stands out as one of the most recent landmark judgments that brings reforms in interpreting Article 142 of the Indian Constitution. Additionally, this case relaxed the cut-off mandate of waiting for 6-months (*also known as the 'cooling-off' period*) after filing the first petition. The case emphasizes the exceptional dichotomy which is portrayed in the Hindu Marriage Act, 1955, under Section 13-B to ensure complete justice. The ruling clarifies that the Supreme Court can grant a divorce in cases of irretrievable breakdown of marriage, even without mutual consent, and can dismiss pending civil and criminal cases to reduce ongoing suffering.

FACTUAL BACKGROUND

Both Shilpa and Varun were married to each other according to Hindu rites and ceremonies and thereafter cohabited as husband and wife at the matrimonial home. Soon after the marriage, big differences arose owing to incompatibility and frequent disputes. There was a lack of mutual trust, respect, and faith in this marital relationship. This breakdown of marriage led to multiple civil suits, adding criminal suits with the due course of time, with no resumption of cohabitation. Several attempts at reconciliation were made, but there was no positive outcome even after the conciliation proceedings, in accordance with Section 23(2) of the Hindu Marriage Act, 1955, and Section 9 of the Family Courts Act, 1984.

Consequently, the parties arrives at a comprehensive ground resolving all inter se disputes, including issues relating to maintenance, alimony, and quashing of pending proceedings. However, procedural constraints under Section 13 B(2) of the Hindu Marriage Act, 1955 cite the mandate of six months as a cooling-off period, which prevents immediate dissolution of marriage by mutual consent. Later to this event, serious questions were raised about the extent of authority that can be exercised by the Hon'ble Supreme Court under Article 142 of the Constitution.

ISSUES RAISED

1. Whether the Supreme Court, in exercise of its powers under Article 142(1) of the Constitution of India, waives the mandatory six-month cooling-off period prescribed under

² Shilpa Sailesh v. Varun Sreenivasan, (2023) 14 SCC 231

Section 13-B(2) of the Hindu Marriage Act, 1955, while granting a decree of divorce by mutual consent.

2. Whether the procedural requirements stipulated under Section 13-B of the Hindu Marriage Act, 1955, can curtail the constitutional powers of the Supreme Court to do “complete justice” under Article 142(1) of the Constitution of India.
3. Whether the Hon’ble Supreme Court is empowered to grant a decree of divorce by mutual consent directly, without reconsidering the matter to the Family Court, when the substantive conditions under Section 13-B(1) of the Hindu Marriage Act stand fulfilled.
4. Whether, upon settlement between the parties, the Supreme Court can dispose of all connected civil and criminal proceedings to achieve complete justice.

JUDGEMENT

In this case, the constitutional bench of the Supreme Court, very articulately examined the scope and limits of its extraordinary authoritative powers stipulated under Article 142(1) of the Constitution of India in matrimonial matters. The Court held that Article 142 confers wide and plenary powers on the Supreme Court to do “complete justice” in any matter unresolved before it, and such power must not be strictly abridged or restricted by procedural requirements prescribed under any statute. The Court ruled that the mandatory six-month cooling-off period under Section 13-B(2) of the Hindu Marriage Act, 1955, is procedural in nature and does not absolve the powers of the apex court as mentioned in the Constitution. Accordingly, the Court may relinquish this period while granting divorce by mutual consent, provided the substantive conditions under Section 13-B(1) are complied with, and the marriage has irretrievably broken down.

Furthermore, the Court went a step forward and held that, in rare cases, it may grant a decree of divorce because of the irretrievable breakdown of marriage as a concrete ground for the same in order to exercise Article 142, even if one of the spouses does not consent. The Court clarified that such power must be exercised with immense thought and care, while considering objective factors such as persistent separation, failure of mediation, and multiplicity of cases. This judgment emphasized that nuptial disputes form a special category where consistent civil and criminal suits cause mental agony, emotional distress, and social harm to parties. Therefore, where the matter is beyond repair and reconciliation has failed, and continuation of marriage serves absolutely no

meaning, the apex Court may step in to bring finality to the dispute, including disposing of connected civil and criminal proceedings as part of a comprehensive settlement.

ANALYSIS OF THE JUDGMENT

The judgment in *Shilpa Sailesh v. Varun Sreenivasan* marks a substantial progress in the Indian matrimonial jurisprudence by supporting the extraordinary use of the power of the Supreme Court, which was cautiously exercised under Article 142. The Court formally recognized that rigid compliance with procedural law, particularly Section 13-B(2) of the Hindu Marriage Act, in certain cases would defeat the pure essence of justice, equity, and good conscience.

One of the most important strengths of this judgment is its understanding of ground realities in matrimonial dispute cases, like prolonged separation, lack of success in mediation, emotional exhaustion, and multiplicity of proceedings. Thus, the Court reaffirmed the doctrine held in the case of *Amit Kumar v. Suman Beniwal (2021)*³ that when parties have been separating for a sufficiently lengthy period, and reconciliation has failed, strict procedural strictures will be nugatory. Again, *B.S. Joshi v. State of Haryana (2003)*⁴, *Gian Singh v. State of Punjab (2012)*⁵, *Jitendra Raghuvanshi v. Babita Raghuvanshi (2013)*⁶ To address the problem of prolonged marital disputes, which is contrary to a constructive judicial system and to promote closure and peace to the litigating parties, the Court held that it is high time to encourage mediation of disputes to achieve finality. Obviously, the more radical implication of the decision is that it legitimizes the power of the Supreme Court to offer divorce based on the ‘*irretrievable breakdown of marriage*’ without the mutual consent of the parties. While ‘*irretrievable breakdown of marriage*’ is instituted as a jurisdiction to seek divorce by the Hindu Marriage Act, the Supreme Court held by referring to constitutional morality, equity, and the doctrine of ‘complete justice’ pursuant to Article 142. For that purpose, the Supreme Court supported prior precedents of similar disputes held in the case of *Naveen Kohli v. Neelu Kohli (2006)*⁷ and *Satish Sitole v. Ganga (2008)*⁸ by which the doctrine of ‘*irretrievable breakdown of marriage*’ has been judicially recognized as a compelling and

³ Amit Kumar v. Suman Beniwal, (2023) 17 SCC 648

⁴ B.S. Joshi v. State of Haryana, (2003) 4 SCC 675

⁵ Gian Singh v. State of Punjab, (1974) 4 SCC 305

⁶ Jitendra Raghuvanshi v. Babita Raghuvanshi, (2013) 4 SCC 58

⁷ Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558

⁸ Satish Sitole v. Ganga, (2008) 7 SCC 734

conclusive indicator of the 'dissolution of marriage' to emancipate the litigating parties from further cruelties.

WAY FORWARD

The *Shilpa Sailesh case* substantiates a serious need for legislative reform in matrimonial law to address marriages that have seriously broken down and have no scope of reconciliation. Parliament should consider amending the Hindu Marriage Act, 1955, to explicitly recognize such a breakdown of marriage and to recognize this as a statutory ground for divorce. The proper forum for the redressal of grievances for a man or a woman is the judiciary, where the judges are to dispense justice. The judiciary, an instrument of social change, has to play an active role to achieve it and be fair, impartial, and above the level of ordinary persons, and sensitive to people's problems.⁹ Unfortunately, the Indian judiciary has shown little sensitivity to the issue. Clearer judicial guidelines empowering Family courts to waive the cooling-off period in particular cases would reduce the unnecessary delays and limit detrimental reliance on the apex court's extraordinary powers under Article 142. Taking resort of mediation and counselling mechanisms through trained experts could ensure meaningful attempts at reconciliation rather than witnessing long litigation formalities and being stuck between the trial dates and appearance obligations.

CONCLUSION

The decision represents a progressive and realistic shift in Indian matrimonial jurisprudence, wherein the national court prioritized substantive justice over procedural stringency. By affirming the comprehensive yet cautious use of Article 142 of the Constitution, the Court acknowledged the harsh realities of broken marriages and the unavailability of continuing irreconcilable relationships through mere adherence to the technical requirements of law. While the ruling offers immediate relief in tragic cases, it also emphasizes the necessity for comprehensive legislative reform to address the grave situation of '*irretrievable breakdown of marriage*' in a structured manner. Eventually, this judgment strengthened the role of the judiciary and reiterated the idea that bona fide justice is more crucial than mere legislative fallacies and loopholes.

⁹ P. P. Saxena, *Matrimonial Laws and Gender Justice*, 45 J. INDIAN L. INST. 335 (2003)