*Section 146, must explain the circumstances why he thinks it to be a case of emergency. In other words, to infer a situation of emergency, there must be material on record before the Magistrate when the submission of the parties is filed, documents produced or evidence adduced.*

*11. We find from this case that there is nothing to show that an emergency exists so as to invoke Section 146(1) and to attach the property in question. A case of emergency, as per Section 146 of the Code has to be distinguished from a mere case of apprehension of breach of peace. When the reports indicate that one of the parties is in possession, rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency. The order acknowledges the fact that Ashok Kumar has started construction in the property in question, therefore, possession of property is with the appellant Ashok Kumar, whether it is legal or not, is not for the SDM to decide."*

25. In view of above and considering over all facts and circumstances of the case, the impugned orders are not sustainable in the eyes of law for the reason that they have been passed without considering and recording any finding as to whether the application under Section 145 Cr.P.C. was maintainable or not in the facts and circumstances of the case, if maintainable, there was an emergency of passing an order of attachment as contemplated under Section 146, when Police Report does not indicate the same and it has also failed to consider that the petitioners are in possession, which is not disputed by either of the parties and in the Police Report and the suit for injunction filed by the petitioners and the suit claiming title, cancellation of sale deed and injunction by the respondent no.4 are pending before the civil court, in which unless the issue of title is determined, the long admitted possession of the petitioners can not be unsettled in the proceedings under Section 145 Cr.P.C. and in view of suit filed by the respondent no.4, there was no need of passing order of attachment. Thus, the impugned orders are not sustainable in the eyes of law and liable to be set-aside. The petition is liable to be allowed.

26. The petition is, accordingly, **allowed**. The impugned judgment and order dated 29.08.2018, passed in Criminal Revision No.141 of 2017 (Mohd. Kasim Usmani and Others Vs. State of U.P. and Others) by Third Additional Sessions Judge, Bahraich and the order dated 24.06.2017 passed in Case No.23 of 2015, under Section 145 Cr.P.C. by the City Magistrate, Bahraich are hereby set-aside and the proceedings of Case No.23 of 2015 are quashed. No order as to costs.

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**(2025) 4 ILRA 952**
**APPELLATE JURISDICTION**
**CIVIL SIDE**
**DATED: ALLAHABAD 21.04.2025**

**BEFORE**

**THE HON'BLE ARINDAM SINHA, J.**
**THE HON'BLE AVNISH SAXENA, J.**

First Appeal Defective No. 207 of 2025

**Smt. Minakshi Gupta ... Appellant**
**Versus**
**Kailash Chandra ...Respondent**

**Counsel for the Appellant:**
Aman Singh, Manoj Pandey

**Counsel for the Respondent:**
Prakash Tripathi

**Civil Law - Hindu Marriage Act, 1955 – Section 13-B – Divorce by Mutual Consent**

**– Code of Civil Procedure, 1908 – Section 5 - Limitation Act, 1963** – Condonation of Delay – Separation Period – Requirement of One Year Separation – Error in Reckoning Separation Date – Mutual Consent Agreement During Separation – No Collusion.

Held:
The appellant-wife and respondent-husband jointly petitioned the Family Court for divorce by mutual consent under Section 13-B of the Hindu Marriage Act, 1955, after living separately since 12.01.2022. The Family Court dismissed the petition on 30.11.2024, erroneously reckoning the separation date from 02.08.2023, the date of their agreement to seek mutual divorce. The Court condoned a 54-day delay in filing the appeal, finding sufficient cause, and admitted the appeal. On ascertaining that the parties had lived separately for over one year before filing the petition and had mutually agreed to divorce without collusion, the Court held that the Family Court erred in presuming togetherness based on the agreement date. The requirement under Section 13-B(1) is separation of one year or more before presenting the petition, and an agreement for mutual divorce during separation does not imply cohabitation, as clarified in *Sureshta Devi v. Om Prakash, (1991) 2 SCC 25*. The absence of collusion and the parties' firm resolve to separate were affirmed, consistent with *Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746*, which emphasizes flexibility in the six-month waiting period under Section 13-B(2) when reconciliation is improbable. The marriage solemnized on 06.12.2004 was declared dissolved by mutual consent, and a decree was ordered to be drawn expeditiously.

**Appeal allowed; marriage dissolved by mutual consent.**

**Case Law Discussed:**

1. Sureshta Devi Vs Om Prakash, (1991) 2 SCC 25* – Section 13-B requires one year of separation before filing a mutual consent divorce petition; agreement during separation does not negate separate living.

2. Amardeep Singh Vs Harveen Kaur, (2017) 8 SCC 746* – Courts may waive the six-month waiting period under Section 13-B(2) if reconciliation is not possible and parties are resolute in seeking divorce.

3. Collector, Land Acquisition Vs Katiji, (1987) 2 SCC 107* – Liberal approach to condonation of delay under Section 5, Limitation Act, to advance substantial justice.

**Observation**:

The Court, upon personal enquiry with the parties present, confirmed their firm resolve to separate, absence of claims against each other, and that their children would remain with the appellant. The joint petition and affidavits clearly established no physical relation since 2013 and separate living since 12.01.2022, satisfying the conditions for mutual consent divorce under Section 13-B

(Delivered by Hon'ble Arindam Sinha, J.)

1. Mr. Manoj Pandey, learned advocate appears on behalf of applicant-appellant and submits, his client is wife. Both parties had joined to petition the Family Court for dissolution of their marriage on mutual consent under section 13-B in Hindu Marriage Act, 1955. By impugned judgment dated 30th November, 2024, the petition was dismissed. His client and respondent are both aggrieved. His client presented the appeal on reported delay of 54 days. The delay be condoned and the appeal admitted.

2. Mr. Prakash Tripathi, learned advocate appears on behalf of respondent. He submits, his client too is aggrieved by impugned judgment. Delay be condoned and impugned judgment reversed.

3. Perused causes shown for the delay. They are accepted. The delay is condoned and the appeal admitted. The application is disposed of.

4. Mr. Pandey submits, there was direction by coordinate Bench for the parties to be present in Court. Both of them are present in Court. On query he submits, the marriage was solemnized on 6th December, 2004. Three children were born in the marriage. It is after that disputes and differences arose between the parties. On 12th January, 2022, his client along with her children, went to her parental house and parties thus separated. On 1st August, 2023, on intervention of elders and relatives, the parties agreed to jointly petition for dissolution of the marriage. Pursuant to the agreement, they petitioned the Family Court. The petition was filed after more than the prescribed period of one year of separation. Upon filing of the petition, parties waited out subsequent prescribed period. There was and is no collusion between the parties in having petitioned the Family Court and thereafter this Court in appeal. The learned Judge erred in reckoning date of separation from on or after the date of agreement i.e. 2nd August, 2023, to dismiss the petition as not maintainable.. The judgment be reversed.

5. Mr. Tripathi confirms, submissions made on behalf of appellant are also those of his client.

6. Parties being present in Court, we asked each of them. They both answered that they have been living separately since 12th January, 2022. They had agreed to seek divorce on mutual consent in terms of agreement dated 1st August, 2023, disclosed in the appeal. They are firm in their resolve to go their separate ways. They do not have any claim or counter claim against each other, but that the children will remain with appellant.

7. We have ascertained from the record that parties have lived separately for a period of more than one year prior to their joint petition filed in the Family Court. In the time of separation they mutually agreed to petition for divorce by mutual consent, as inferred from averments made in the joint petition and the affidavit of evidence filed by the parties, There are categorical statements of no physical relation since year 2013 and separate living since 12th January, 2022.

8. Requirement under sub-section (1) in section 13-B is for separation of one year or more before the petition is presented. During the period of separation, in event there is agreement to file for divorce by mutual consent, unless there is proof that parties, for the agreement or thereafter stayed together, the meeting of minds to petition for divorce by mutual consent does not militate against them living separately at the time of agreement made during the separation. We have next ascertained, upon filing the petition and waiting out the prescribed period of six months, motion was made for grant of divorce by mutual consent.

9. In view of aforesaid, the learned Court erred on facts in presuming togetherness because parties were, as on 1st August, 2023 in agreement that they would file for mutual divorce, as the agreement came after they separated on 12th January, 2022. Cause of action is a bundle of facts and averment that lastly the cause of action accrued on 1st August, 2023, as mentioned in the petition, is a fact that constitutes whole of the cause of action. Such

averment can in no way be said to be unambiguous or clear admission of parties being together as on that date.

10. We are satisfied, on hearing the parties and making our enquiry as aforesaid, parties are entitled to divorce by mutual consent. The averments in the petition are true. Hence, we declare the marriage solemnized on 6th December, 2004 to be dissolved by mutual consent. The decree be drawn up expeditiously.

11. The appeal is disposed of.

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**(2025) 4 ILRA 955**
**APPELLATE JURISDICTION**
**CIVIL SIDE**
**DATED: LUCKNOW 21.04.2025**

**BEFORE**

**THE HON'BLE RAJNISH KUMAR, J.**

Second Appeal No. 361 of 2018

**Ram Baran ... Appellant**
**Versus**
**Sheetla Prasad Yadav & Anr.**
**...Respondents**

**Counsel for the Appellant:**
Mohammad Ehtesham Khan

**Counsel for the Respondent:**
C.B. Singh, Anshuman Singh Rathore, Bhoomika Bajpai, Raghaw Ram Upadhyay

**Civil Law - Civil Procedure Code, 1908 – Section 100 – U.P. Zamindari Abolition and Land Reforms Act, 1950 – Section 229-B** – Jurisdiction of Civil Court – Suit for Cancellation of Sale Deed – Fraud, Cheating, and Impersonation – Prima Facie Title of Recorded Tenure Holder – Concurrent Findings of Fact – Scope of Interference in Second Appeal.

**Held**:

The appellant challenged the judgment and decree dated 10.12.2013 by the Additional Civil Judge, Sultanpur, and the appellate court's confirmation on 29.09.2018, which cancelled a sale deed dated 20.04.1987 on grounds of fraud, cheating, and impersonation. The appeal was admitted on the substantial question of whether the civil court had jurisdiction to entertain the suit for cancellation of the sale deed, given that the plaintiff's predecessor-in-interest was not recorded as the tenure holder, or if the suit was maintainable only in the revenue court under Section 229-B of the U.P.Z.A. & L.R. Act. The Court held that a civil court has jurisdiction to try a suit for cancellation of a sale deed when the plaintiff's predecessor-in-interest was the recorded tenure holder with prima facie title, and the suit alleges fraud, as per *Shri Ram v. Ist Addl. Distt. Judge, (2001) 3 SCC 24*. The plaintiff's husband, Ram Dev, was the recorded tenure holder, and after his death, the plaintiff, as his legal heir, had prima facie title. The sale deed was not supported by evidence of execution or payment of consideration, and the defendant/respondent no.2, a beneficiary, supported the plaintiff's claim of fraud. Concurrent findings of fact by both courts below, based on evidence, were not perverse and thus not liable to interference under Section 100 CPC. The substantial question of law did not arise, as the civil court was competent to entertain the suit. The appeal was dismissed for lack of merit.

**Second Appeal dismissed.**

**Case Law Discussed**:

1. Shri Ram Vs Ist A.D.J., (2001) 3 SCC 24* – Civil court's jurisdiction to entertain suit for cancellation of sale deed by recorded tenure holder alleging fraud.

2. Kamla Prasad Vs Kishna Kant Pathak, (2007) 4 SCC 213* – Suit for declaration of rights in revenue court required if plaintiff's name not recorded in revenue records.

3. Ram Padarath Vs II A.D.J., Sultanpur, 1989 AWC (FB) (LB) 290* – Recorded tenure holder can seek cancellation of void document in civil court without needing declaration in revenue court.