

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 03.08.2011

MAT.APP.50/2011

Shri Arvind Kumar Appellant

Through: Ms.Deepika Marwaha, Advocate

Vs.

Smt.Nirmala Bharti @ Neha Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

KAILASH GAMBHIR, J.Oral:

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1. By this appeal filed under Section 28 of the Hindu Marriage Act, the appellant seeks to challenge the order dated 13.06.2011 passed by the Principal

Judge, Family Courts, Dwarka, New Delhi whereby the application of the appellant under Section 14 of the Hindu Marriage Act was dismissed.

2. Assailing the said order, Ms. Deepika Marwaha, counsel appearing for the appellant submits that the learned Family Court has passed the impugned order completely ignoring the proviso of Section 14 of the Hindu Marriage Act and has also not properly appreciated the ratio of judgments in the case of *Anil Kumar Jain vs Maya Jain (2009) 10 SCC 415*, *Manish Goel vs. Rohini Goel (2010) 4 SCC 393* and also in the case of *Mohan Saili & Sonali Singh Vs. Nil 2010 (175) DLT 259*.

3. I have heard learned counsel for the appellant.

4. Nobody is present on behalf of the respondent despite service of notice. The respondent is accordingly proceeded ex parte.

5. As per the facts disclosed in the present appeal, the appellant got married to the respondent on 12.03.2011 according to Hindu rites and ceremonies. A petition for divorce was filed by the appellant against the respondent on 08.06.2011 on the ground of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act. Along with the said petition, the appellant had also filed an application under Section 14 of the Hindu Marriage Act seeking leave of the

court to file the said petition before the period of one year from the date of marriage. The said application of the appellant was dismissed by the learned trial court vide the impugned order dated 13.06.2011.

6. The reason to dismiss the said application of the appellant taken by the learned trial court is that it has no statutory power to condone the period of one year prescribed under Section 14 of the said Act for filing the divorce petition. For arriving at such a conclusion, the court has placed reliance on the two judgments of the Hon'ble Supreme Court in the case of **Manish Goel** (supra) and **Anil Kumar Jain** (supra). This Court is quite amazed to read the impugned order passed by the learned Principal Judge as the learned Judge has not even bothered to just have a bare look at the said legal provision i.e. Section 14 of the Hindu Marriage Act. Evidently, proviso of the said section gives a right to the petitioner to move an application in accordance with the rules framed by the High Court to seek leave of the court to file the petition before the expiry of one year period from the date of the marriage on the ground of exceptional hardship or on account of exceptional depravity on the part of the respondent and on the presentation of such an application the discretion has been given to the court to

allow such an application even before the expiry of period of one year. In none of the said two judgments referred to by the learned trial court, Section 14 of the Hindu Marriage Act was under discussion. The aforesaid cases were dealing with the issue of waiver of statutory period of six months as envisaged under Section 13-B (1) & (2) of the Hindu Marriage Act. The learned trial court did not realize that the proviso of Section 14 itself gives a remedy to the petitioner to seek waiver of the said period of one year and for seeking such waiver the petitioner approaching the court has to satisfy one of the two conditions i.e. (1) because of exceptional hardship to the petitioner or (2) because of exceptional depravity on the part of the respondent. For better appreciation, Section 14 of the Hindu Marriage Act is reproduced as under:-

"14. No petition for divorce to be presented within one year of marriage.-

(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of marriage by a decree of divorce, [unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented [before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any

misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the [expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the [expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed."

On a plain reading of the said section, it is apparent that the said section is on the statute book with a specific purpose of preventing hasty recourse to judicial process for dissolution of marriage and for the parties to aim at reconciliation and make effort to save their marriage. However, it also cannot be disregarded that the proviso to the said section gives the discretion to the court to allow the party to present a petition for divorce before expiry of one year period from the date of marriage on being satisfied that the case is of extreme depravity on the part of the respondent or extreme hardship to the petitioner. Even sub section (2) of section 14 presupposes the grant of leave for presentation of petition before the expiry of one year period. Hence, it cannot be said that the presentation of petition of divorce before the expiry of one year is completely barred as the proviso comes to the rescue of exceptional cases giving them room and it is a decision to be made by the court on the merits of the case. Hence, the learned trial court fell in grave error in proceeding on the premise that the petition

cannot be permitted to be presented before period of one year from the date of marriage.

7. There is no need to re-emphasise that once the provision of law itself exists on any statute book, the same cannot be ignored by any of the Courts. The learned trial court has clearly passed the impugned order in a perfunctory manner without even caring to look at the said provision. The learned trial court has also committed yet another mistake in placing reliance on the said two judgments of the Hon'ble Apex Court and also of this Court in *Mohan Saili* (supra) which are totally inapplicable to the issue in controversy, as the learned trial court was not dealing with the issue of granting waiver of the statutory period of six months for entertaining second motion petition under Section 13-B (2) of the said Act, where the Apex Court in the said cases has taken a view that it is only in the exercise of extra ordinary power under Article 142 of the Constitution of India, the Supreme Court can grant the divorce under Section 13-B (2) of the Hindu Marriage Act without even waiting for the statutory period of six months, while none of the other courts can exercise such similar power. Although in the case of ***Neeti Malviya Vs. Rakesh Malviya (2010) 6 SCC 413*** the Supreme Court has taken a view that even it also cannot waive

the said statutory period of six months in the exercise of its extraordinary power under Article 142 of the Constitution of India and the matter is now pending consideration before the larger Bench of the Supreme Court. Any how that is not the subject matter of controversy here and as already discussed above, under the proviso of Section 14 of the Hindu Marriage Act such an application seeking waiver of period of one year as prescribed in the sub-section (1) of Section 14 of the Hindu Marriage Act can be waived and dispensed with on the court being satisfied on the petitioner making out a case for the grant of such waiver.

8. In the light of the above discussion, the present appeal deserves to be allowed and the same is accordingly allowed. The impugned order dated 13.06.2011 is set aside and the matter is remanded back to the learned Family Courts, Dwarka, New Delhi. The learned trial court is directed to decide the application of the petitioner filed by him under Section 14 of the Hindu Marriage Act on merit within a period of one month from the date of this order.

9. Parties are directed to appear before the learned trial court on 29th August, 2011.

KAILASH GAMBHIR, J

AUGUST 03, 2011

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