

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

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Reserved on: 10.01.2013
Date of decision: 01.03.2013

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FAO No.312 of 2012

SANKALP SINGH

....Appellant

Through: Mr. Rishabh Sancheti & Ms. Padma Priya,
Advs. with Appellant in person.

Versus

PRARTHANA CHANDRA

....Respondent

Through: Mr. Ankur Mahindroo, Adv.
Mr. Sudhanshu Batra, Sr. Adv.
(Amicus Curiae).

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

SANJAY KISHAN KAUL, J.

1. Marriage under Hindu Law is sacramental. The reforms in Hindu Personal Law have a history of more than 180 years starting from the initiatives taken by Raja Ram Mohan Roy. There were various enactments to reform the law relating to marriages and divorce amongst Hindus. Post independence a Hindu Code was drawn up which resulted in different legislations relating to personal laws. Thus, The Hindu Marriage Act, 1955 (hereinafter referred to as the 'said Act') is an Act to amend and codify the law relating to marriages among Hindus.
2. Section 13 of the said Act sets out the grounds on which a marriage can be dissolved by a decree of divorce like cruelty, desertion,

insanity, etc. However, for presentation of a petition for divorce, the causes given under Section 13 of the said Act were restricted by a requirement of a minimum period of subsistence of the marriage in view of Section 14 of the said Act.

3. Section 13 of the said Act is based on a fault theory (i.e., the opposite party must have been at fault on account of any of the grounds set out in the said Act and no party can take advantage of its own wrong). Act 68 of 1976 effective 27.5.1976 sought to carve out another line of divorce by bringing in the concept of mutual consent introducing Section 13B. The scheme of this Section provided for a petition to be presented satisfying three grounds:

- i. the parties have been living separately for one (1) year or more;
- ii. that they have not been able to live together; and
- iii. they have mutually agreed that the marriage should be dissolved.

However, even after the Court is required to be satisfied on account of the aforesaid parameters, there is a further hiatus period provided under sub-section (2) of Section 13B of the said Act as the second motion has to be presented not earlier than six (6) months after the date of presentation of the petition referred to in sub-section (1) [not more than eighteen (18) months after the said date] if the earlier petition is not withdrawn in the mean time. On the satisfaction of the Court a decree for dissolution of the marriage can be passed. It is now settled legal position that this period of six (6) months cannot be waived by either the trial court or the High Court and the only

exception to the same is the Supreme Court exercising power under Article 142 of the Constitution of India.

4. In the conspectus of the aforesaid background of the legal position we now come to the facts of the present case.
5. The appellant/husband and the respondent/wife were married according to Hindu rites on 19.2.2012 in Rajasthan and after the marriage lived together in Mumbai, the place of residence of the husband. It is the case of the parties that the marriage could not be consummated for reasons the parties do not wish to disclose. The respondent is stated to have left the matrimonial home on 12.4.2012 and the parties are stated to be living separately since then on account of temperamental differences. No rapprochement has been possible despite all endeavours. The appellant is stated to have been staying and working in USA and had come to India only for purposes of getting married and in view of the failure of the marriage was desirous of dissolution of the marriage at the earliest so that he could re-marry and settle down in life by going back to USA.
6. In order to resolve disputes the parties approached the Mediation & Conciliation Centre of the Delhi High Court and a Memorandum of Understanding/Conciliation Agreement was signed on 21.5.2012. Interestingly this was a pre-litigation mediation endeavour in which both the parties joined in. In those proceedings it was agreed that a mutual consent petition should be filed at the earliest without even waiting for the period of one (1) year of separation to elapse.
7. The parties, thus, filed a petition under Section 13B (1) of the said Act and along with that petition filed an application under Section 14 of the said Act praying for waiver of the period of one (1) year of

separation for filing the petition. However, the Family Court, Patiala House dismissed this application vide order dated 12.6.2012 and consequently also dismissed the petition under Section 13 B (1) of the said Act.

8. A perusal of the impugned order shows that after noticing the salient facts including the plea of the parties of having settled issues qua maintenance/alimony, marriage expenses, etc., the petition and the application had been filed. The judgements cited qua the issue of waiver of the period of one (1) year were examined by the Family Court and have been distinguished. In CM (M) No.310/2011 titled Ved Bhushan Sharma Vs. Alka Sharma decided on 22.3.2011 the advanced age of the parties and the medical condition of the husband who was suffering from Cerebral Palsy were factors taken into account. In Arvind Kumar Vs. Nirmala Bharti @ Neha 182 (2011) DLT 236 the petition had been filed under Section 13 (1) (ia) of the said Act on grounds of cruelty.
9. The Family Court noticed that in Sunny Vs. Sujata 2012 IV AD (Delhi) 732 the learned ADJ had dismissed an application of the parties under Section 14 of the said Act and a joint petition filed under Section 13B of the said Act. An appeal was preferred before the Delhi High Court, which was also dismissed relying upon different pronouncements more specifically in Mohin Saili and Sonali Singh Vs. Nil 2010 (175) DLT 259 where it had been held that the period of one (1) year for living separately under Section 13B (1) of the said Act was not directory and the same was mandatory and could not be condoned under Section 14 of the said Act. The learned Family Court has, thus, held vide the impugned judgement that the principles of

harmonious construction would require that the proviso to Section 14 of the said Act would be applicable in case of petitions filed under Section 13 of the said Act but not to petitions filed under Section 13B of the said Act as Sections 14 and 13B are mutually exclusive. It was this order which is sought to be assailed in appeal.

10. We considered it appropriate to appoint an Amicus Curiae to assist this Court in view of the importance of the legal principles required to be laid down which would have a far greater ramification than just a dispute *inter se* the parties. We, thus, appointed Mr. Sudhanshu Batra, Senior Advocate, as Amicus Curiae to assist this Court in the matter who has very ably assisted us apart from the assistance provided by learned counsels for the parties. It was conceded by all the learned counsels for the parties that there appears to be a cleavage of judicial opinion on the aforesaid crucial question and the Hon'ble Supreme Court had not had the occasion to consider the aspect directly in any case. The question, thus, to be examined is as under:

“Whether the benefit of proviso to Section 14 (1) of the said Act can be availed of to present a petition under Section 13B of the said Act for divorce by mutual consent even though one of the essential ingredients of sub-section 1 of Section 13B of the said Act to present the petition is that the party should be living separately for a period of one (1) year or more?”

11. In order to appreciate the controversy it is necessary to reproduce the relevant statutory provisions as under:

“[13B. Divorce by mutual consent. —(1) Subject to the provisions of this Act

a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976)*, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]”

“14. No petition for divorce to be presented within three years of marriage.-

(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a 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.

(2) In disposing of any application under this section for leave to present a petition for divorce before the [expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the [said one year].”

12. The cleavage of judicial opinions arises from the interpretation of the interplay of the said Sections of the Act. Pertinently, Section 13B of the said Act was inserted subsequently by Act 68 of 1976 when certain amendments were also simultaneously carried out to Section 14 of the said Act. Thus, one judicial view is that Section 13B is a Code by itself which is different from the grounds of divorce provided under Section 13(1) of the said Act. The philosophy of Section 13 of the said Act is that one of the spouses has to allege and prove the grounds of divorce against the other spouse and should not be taking advantage of his/her own wrong. This is, thus, based on a fault theory. Section 14 restricts presentation of such a petition for divorce within the period of one (1) year from the date of marriage. However, the proviso to sub-section (1) of Section 14 of the said Act allows presentation of a petition even before the end of one (1) year from the date of marriage on the ground that “a case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent”. Such exceptional hardship and depravity would, thus, have to be established by the petitioner in order to avail of the proviso to sub-section (1) of Section 14 of the said Act.

13. On the other hand Section 13B of the said Act though appears between Section 13 and Section 14 of the said Act in the statute was introduced subsequently by Act 68 of 1976 and this provision is a complete Code by itself. The reason for this is that it is not a new ground for grant of divorce within the theme of Section 13 of the said Act but introduced the concept of a divorce by mutual consent, i.e., parties without alleging anything against each other and without proving any of the grounds under Section 13 of the said Act can agree to go in for a divorce by mutual consent provided they satisfy the three ingredients mentioned aforesaid.
14. One of the essential ingredients provided therein is living separately for a period of one (1) year and, thus, unless this ground is satisfied the very basis of presentation of a petition for divorce under Section 13B of the said Act does not exist. Thus, the proviso to sub-section (1) of Section 14 of the said Act would have no application to presentation of a petition under Section 13B of the said Act. Needless to add that this would only be the first motion and there has to be a compulsory wait/re-think period of, at least, six (6) months and not more than eighteen (18) months when the second motion has to be filed and the Court has to be satisfied about the joint pleas of the parties. Thus, there can be no waiver of this one (1) year period from the date of the marriage.
15. This philosophy is also to be buttressed with the plea that under the proviso to sub-section (1) of Section 14 of the said Act an exceptional hardship and depravity has to be established and how would a court come to know about it unless it is disclosed, alleged/proved. In a mutual consent divorce petition no allegations are made against each

other and, thus, by its very nature the proviso cannot apply to a petition under Section 13B of the said Act.

16. The second set of opinion is and would be based on different legal understandings. At the stage when by Act 68 of 1976 Section 13B was introduced in the said Act, the provisions even of Section 14 of the said Act were amended. The legislature cannot be said to be ignorant of the provisions of Section 14 of the said Act when it introduced Section 13B of the said Act. The provisions of Section 14 of the said Act begins with a 'notwithstanding' clause, i.e., "Notwithstanding anything contained in this Act". Thus, irrespective of any other provision of the said Act, no petition for dissolution of marriage is to be presented within the period of one (1) year of the marriage (the period being modified by the amending Act 68 of 1976). Thus, the proviso to sub-section (1) of Section 14 of the said Act which permits presentation of a petition within the period of one (1) year of the marriage would equally apply to a petition to be presented under Section 13B of the said Act.
17. This aspect is sought to be reinforced by the wording of Section 13B of the said Act. Sub-section (1) of Section 13B of the said Act begins with "Subject to the provisions of this Act". This would imply that the provisions of sub-section (1) of Section 13B of the said Act are subject to the provisions of the proviso to sub-section (1) of Section 14 of the said Act. The aspect of the requirement of alleging and establishing exceptional hardship and depravity is sought to be explained by suggesting a procedure that the parties may not like to allege against each other the aspects of such exceptional hardships but it can always be open to the parties, if they so agree, to jointly submit

the same in a sealed cover as enclosure to an application under the proviso to sub-section (1) of Section 14 of the said Act in case of a petition under Section 13B of the said Act.

18. In respect of the aforesaid as to what is meant by use of the expression “Notwithstanding anything contained in the Act” as contradiction to the phrase “Subject to the provisions of this Act” reliance has been placed on the judgement of the Supreme Court in Chandavarkar Sita Ratna Rao Vs. Ashalata S. Guram AIR 1987 SC 117 = (1986) 4 SCC 447. It has been explained that when a clause begins with the word “Notwithstanding” the object is to give it overriding effect over other provisions of the Act which is equivalent to saying in spite of those provisions the particular clause would have a full operation. This in contra-distinction to the phrase “Subject to” which conveys that the provision would yield to another provision. The relevant discussion as contained in paras 68 & 69 is as under:

“68. A clause beginning with the expression “notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract” is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum [AIR 1964 SC 207, 215 : (1964) 4 SCR 280] .

69. It is well settled that the expression “notwithstanding” is in contradistinction to the phrase “subject to”, the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of sub-section (1) of Section 15 with sub-section (1) of Section 15-A. We are therefore unable to accept, with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned Single Judge in the judgment under appeal.”

19. The view, which we have referred to aforesaid, is also said to be supported by sub-section (1) of Section 13B of the said Act. It is not in dispute that neither the trial court nor the High Court can waive the period or wait of six (6) months between the presentation of the first motion and the second motion. It is, thus, submitted that all that is sought to be done by moving an application under the proviso to sub-section (1) of Section 14 of the said Act is to reduce the period of presentation of the first motion under Section 13B of the said Act to a period less than a year whereafter in any case there would a further wait of six (6) months before the second motion is filed. It was, thus, suggested that this can be worked out by permitting such a petition to be presented provided it satisfies the requirement of exceptional hardship under sub-section (1) of Section 14 of the said Act and thereafter the parties would still wait for six (6) months period to present the second motion.
20. In the facts of the present case the effect would be that if exceptional hardship can be shown then the first motion presented on 23.5.2012 can be held to be valid permitting the second motion to be presented on an expiry of six (6) months period. The decree of divorce would come into effect only post second motion. None of the three essential

ingredients of Section 13 B of the said Act are waived by ensuring that the decree of divorce does not take effect for a period of one (1) year from separation. The second motion can, thus, be presented after 12.4.2012 which would be within the window of six (6) to eighteen (18) months of first motion. On the other hand if the impugned order is sustained it would imply a fresh petition to be filed under Section 13B (1) of the said Act on the expiry of one (1) year of the separation, i.e., after 12.4.2012, and thereafter wait for another six (6) months.

21. Lastly in the aforesaid behalf it was also suggested that the very objective of introduction of Section 13B of the said Act was to make obtaining of divorce simpler by permitting the parties to jointly apply though undoubtedly a restriction of one (1) year was put so that it is not as if the parties after marriage act in haste in obtaining divorce and they make a serious endeavour to work the marriage. It has, thus, been suggested that liberal construction should be made of the provisions to further the object of obtaining divorce by mutual consent and where nothing is left in the marriage, no purpose would be served by prolonging the ultimate result of mutual consent divorce especially when it has been preceded by, in the present case, a pre-litigation mediation.
22. The various judicial pronouncements cited by learned counsels for the parties and the Amicus Curiae are being discussed hereinafter:

Proposition:

A petition for divorce by mutual consent can be presented before the expiry of one (1) year of the marriage so long it is not under coercion or intimidation or undue influence, there are no chances of reconciliation and the parties have fully understood the impact and

effect of the divorce by mutual consent with the continuation of marriage bound to cause undue hardship to the spouses:

- i. In Re: Pooja Gupta & Anr. 118 (2005) DLT 492.
- ii. Tarun Kumar Vaish Vs. Meenakshi Vaish 119 (2005) DLT 567.
- iii. CM (M) No.310/2011 titled Ved Bhushan Sharma Vs. Alka Sharma decided on 22.3.2011.
- iv. Amit Jain Vs. Taruna Jain (2007) 147 PLR 114.
- v. Ujwal Shetty & Anr. Vs. Nil II (2002) DMC 556.
- vi. Arvind Kumar Vs. Nirmala Bharti @ Neha 182 (2011) DLT 236.

Proposition:

The period of one (1) year wait under Section 13B (1) of the said Act cannot be waived as the object is to ensure a fair trial being given to every marriage. Section 13B of the said Act is a complete code in itself and, thus, waiver under proviso to Section 14 (1) of the said Act cannot be invoked for such a petition:

- i. Vinod Arora Vs. Manju Arora AIR 1982 Delhi 592.
- ii. Urvashi Sibal & Anr. Vs. Govt. of NCT of Delhi AIR 2010 Delhi 157.
- iii. Mohin Saili and Sonali Singh Vs. Nil 2010 (175) DLT 259.
- iv. Sunny Vs. Sujata 2012 IV AD (Delhi) 732.
- v. Miten S/o Shyamsunder Mohota (Goidani) & Anr. Vs. Union of India 2008 (6) Bom CR 124.
- vi. Principal Judge, Family Court, Nagpur Vs. Nil AIR 2009 Bombay 12.

Proposition:

The matrimonial court or the High Court has no power to waive the minimum period of six (6) months required to elapse between the first motion and the second motion and it is only the Supreme Court which can do so by exercising power under Article 142 of the Constitution of India. Where the Supreme Court finds an irretrievable breakdown of marriage it can do complete justice under the said Article:

- i. Anil Kumar Jain Vs. Maya Jain (2009) 10 SCC 415.
- ii. Devinder Narula Vs. Meenakshi Nangia (2012) 8 SCC 580.
- iii. Anjana Kishore Vs. Puneet Kishore (2002) 10 SCC 194.
- iv. Jimmy Sudershan Purohit Vs. Sudarshan Sharad Purohit (2005) 13 SCC 410.

23. We may notice that as per the recommendations of the Law Commission of India 59th Report on the said Act, a recommendation has been made for deletion of Section 14 of the said Act. The amendment to the provision has brought down the wait period from three (3) years to one (1) year and even the period of wait of one (1) year can be waived if the tests as per the proviso are satisfied. The Law Commission noticed that the object of prescribing a minimum period for entertaining a petition for divorce is to ensure that if there is a prospect of reconciliation then effort should be made in that direction but since hasty divorce is not to be encouraged no restriction of time period has been recommended. This is so as the Court would have the opportunity to consider if the peace and harmony are beyond retrieval under Section 23 (2) of the said Act. However, this is only a recommendation and the legislature in its wisdom has not, as yet, acted in pursuance of the said recommendation.

24. On a conspectus of the aforesaid material and judicial pronouncements we are of the view that the provisions in question must be harmoniously construed to give a meaning to all of them as also to the intent of the legislature. We may note that there are grounds like desertion under Clause (ib) of sub-section (1) of Section 13 of the said Act which by themselves require for a continuous period of not less than two (2) years of such desertion. Similarly under Clause (vii) a person is not to be heard of alive for a period of seven (7) years or more. These provisions read as under:

“13. Divorce.-

[(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;”

25. It is not as if the proviso to sub-section (1) of Section 14 of the said Act would apply and the period can be waived where the decree of divorce is sought under the aforesaid provisions. This may happen when a petition is filed say on the ground of cruelty, voluntary sexual intercourse with any other person, etc. This is so as the very ingredient of seeking a divorce on ground of desertion is a period of separation of two (2) years and similarly the spouse should not be heard of for a period of seven (7) years for availing of the relevant ground. On the same pattern there are certain essential ingredients of a mutual consent petition under sub-section (1) of Section 13B of the said Act, which have been set out hereinbefore numbering three, viz.:

- i. The parties have been living separately for one (1) year or more;
- ii. That they have not been able to live together;
- iii. They have mutually agreed that the marriage should be dissolved.

26. Thus, it cannot be envisaged that a decree of divorce by mutual consent can be granted before the expiry of the period of one (1) year of living separately as that is the very ingredient for presentation of a petition for such mutual consent divorce. It cannot be said that whether this period is more or less than necessary because in the wisdom of the legislature such a period has been laid down and possibly so to give some hiatus period to the parties and so it should not be a divorce in haste. Not only that sub-section (2) of Section 13B of the said Act envisages wait of, at least, six (6) months for presentation of a second motion on which a decree of divorce can be granted, such period being counted from the date of presentation of the first motion. The pronouncements of the Supreme Court in Anil Kumar Jain case (supra) and Devinder Narula case (supra) make it clear that there cannot be waiver of such a period of six (6) months by either the trial courts or the High Court and the only exception to this is exercise of power by the Supreme Court under Article 142 of the Constitution of India.

27. Simultaneously we cannot lose sight of the fact that when Section 13B was introduced, the legislature was well aware of the existence of Section 14 of the said Act and that too with a “Notwithstanding anything contained in this Act” clause. In fact, Section 14 of the said Act was partially amended vide the same Amending Act which

introduced Section 13B. Not only that while enacting sub-section 13B it has been mentioned in sub-section (1) in the beginning with a “Subject to the provisions of this Act” clause. A reading of these two “Notwithstanding” and “Subject to” clauses as per the legal principles enunciated in Chandavarkar Sita Ratna Rao (supra), thus, make it obvious that the application of Section 14 of the said Act cannot be merely thrown out in the context of Section 13B of the said Act and, thus, so also the proviso to sub-section (1) of Section 14 of the said Act. Thus, the question arises as to how the proviso can apply to Section 13B of the said Act and what are the essential ingredients or precautions for the same.

28. It is not in dispute or doubt that before the proviso to sub-section (1) of Section 14 of the said Act can be invoked, a case of exceptional hardship or exceptional depravity has to be made out. Those are the essential ingredients of the proviso. A mutual consent divorce petition envisages no allegation against each other. In fact, the settlement arrived at *inter se* the parties in the mediation proceedings also emphasized this aspect. However, in our view this cannot exclude the parties to jointly set forth the exceptional hardship even if they do not want to make allegations against each other. Exceptional hardships can be set out either in the application filed under the proviso to sub-section (1) of Section 14 of the said Act or the same can be enclosed in a sealed cover by the parties for the benefit of the Court and the Court would have to satisfy itself whether the parameters of such exceptional hardship are satisfied for invoking the provisions of proviso of sub-section (1) of Section 14 of the said Act before such an application can be entertained.

29. Let us suppose that the trial court/Family Court is satisfied about a case of exceptional hardships, what would be the sequitur? We have already held that there is an element of essential ingredient of there being a lapse of separation of one (1) year for entertaining a petition under sub-section (1) of Section 13B of the said Act. There is also an essential ingredient of six (6) months period between the first motion and the second motion under sub-section (2) of Section 13B of the said Act. We are also conscious of the objective of introduction of Section 13B of the said Act which was to permit divorce by mutual consent rather than throw mud on each other irrespective of who is at fault. If we apply the strict parameters the result would be that a party by making an allegation against the other would be able to present a petition before the expiry of one (1) year of the marriage but if a mutual consent divorce is sought, it would not be permissible.
30. A more liberal construction can envisage the application of the proviso to Section 14 (1) of the said Act without compromising on the essential ingredients of Section 13B (1) of the said Act. This is possible by ensuring that none of the three essential ingredients are compromised. Thus, parties should have been living separately for one (1) year or more, that they have not been able to live together and have mutually agreed that the marriage should be dissolved. However, the dissolution of marriage has to take effect only after the hiatus period of six (6) to eighteen (18) months, on the second motion being filed. Thus, before such a decree of divorce is passed post second motion the period of one (1) year of separation ought to have elapsed but in order to present the first motion, the requirement of one (1) year separation would not apply provided it meets the parameters

of proviso to Section 14 (1) of the said Act. This view would not compromise on the essential ingredients of any part of Section 13B of the said Act and simultaneously respect the wisdom of the legislature which enacted Section 13B of the said Act and incorporated it by insertion with sub-section (1) beginning with “Subject to the provisions of this Act” which would include Section 14. Not only that Section 14 of the said Act itself begins with a “Notwithstanding” clause. This would, thus, be the harmonious construction of the provisions of the said Act which would enable to give meaning to all the relevant provisions of the said Act without compromising the ingredients of any. Such a course of action is possible especially because there will not be a waiver of minimum six (6) months hiatus period between the grant of first motion and the second motion being presented with the additional condition under Section 13B (1) of the said Act that even if the first motion is presented within the first year of marriage as per the satisfaction of proviso to Section 14 (1) of the said Act, the decree of divorce would only be granted once the period of one (1) year has elapsed from the separation.

31. The effect of the aforesaid would be in the given facts of the case that the order dated 12.6.2012 can be set aside and the application entertained for grant of first motion under Section 13B (1) of the said Act. However, the decree of divorce and the second motion presented would not be passed till the expiry of the period of one (1) year of living apart from 12.4.2012. The net period for grant of divorce would, thus, stand reduced. This would, of course, have to satisfy the ingredients of the proviso of Section 14 (1) of the said Act, i.e., exceptional hardship or exceptional depravity. This test would have

to be examined on the basis of the material to be placed by the two parties (which has not been placed so far) in support of the application under the proviso to sub-section (1) of Section 14 of the said Act albeit it can be done in a sealed cover. We may also add that in the present case a settlement through pre-litigative mediation was arrived at.

32. We, thus, set aside the impugned order dated 12.6.2012 with a direction to the Family Court, Patiala House to re-examine the case for grant of the first motion on the application earlier presented but permitting the parties to place on record the material in support of their application under proviso to Section 14 (1) of the said Act within fifteen (15) days from today. If a case of exceptional hardship or exceptional depravity is made out then the first motion can be passed and the second motion can be presented within the window of six (6) to eighteen (18) months from the date when the first motion could have been accepted without waiving the minimum period of six (6) months and also ensure that the period of one (1) year of separation from 12.4.2012 has expired.
33. The appeal is allowed in the aforesaid terms leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

MARCH 01, 2013
b'nesh

RAJIV SHAKDHER, J.