

Mr. Mahesh R. Joshi for Petitioner.
Mr. Imiyaz A.I. Patel for Respondent No.1.

P.C. :

2. Heard Mr. Joshi, learned Counsel for petitioner and Mr. Patel, learned Counsel for respondent No.1. On the oral application made by Mr. Joshi, respondent No.2 is deleted as no relief is claimed against it. Rule. Mr. Patel waives service for respondent No.1. By consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Joshi submitted that the marriage between the petitioner and respondent No.1 was solemnized on 23.05.1998. Son Prashant was born on 23.09.2000. While rejecting the

application, the learned trial Judge has observed in paragraph 6 that as per the allegations of the petitioner, respondent No.1 was pregnant at the time of solemnization of marriage. In paragraph 9, the learned trial Judge observed that Section 13(1)(i) of the Hindu Marriage Act, 1955 prescribes the ground of adultery for the dissolution of marriage. However, the adultery is restricted if the solemnization of the marriage and not prior to solemnization of marriage. In other words, the learned trial Judge held that as respondent No.1 was pregnant at the time of solemnization of marriage, the alleged adultery was prior to the solemnization of marriage and not after solemnization of marriage. Mr. Patel was not in a position to support the findings recorded in paragraphs 6 and 9 of the impugned order. Even otherwise, from the material on record, the findings cannot be sustained.

5. In view thereof, the impugned order cannot be sustained and on this ground alone, it is liable to be set aside. Hence, Petition is disposed of in the following terms:

- (a) Impugned order dated 17.10.2014 is quashed and set aside;
- (b) Exhibit-14 filed in Marriage Petition No.87 of 2012 is restored to the file of the learned trial Judge;
- (c) Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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