

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1128 OF 2015

(Mukul s/o Pavankumar Agrawal vs. Sau. Divya @ Khushbu w/o Mukul Agrawal)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

**CORAM : B.P. DHARMADHIKARI &
S.B. SHUKRE, JJ.
APRIL 15, 2015.**

Heard Shri Ghate, learned counsel for the petitioner.

2. Nobody appears for the respondent. There was no appearance even on earlier date. Prior thereto, Shri Mordiya, learned counsel had appeared for the respondent.

3. Shri Ghate, learned counsel submits that the petitioner and the respondent got married on 19.04.2014 and thereafter stayed together for 22 days. On 16.10.2014, they have also entered into an agreement for divorce by mutual consent. In the wake of these developments, while filing proceedings under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) for dissolution of marriage, an application under Section 14(1) of the Act was also moved seeking leave to tender the petition within a period of one year of marriage. When the learned counsel for the petitioner attended Family Court, he was told that notice has been issued to other side. He, therefore, left the Court. However, later on

through his office, the learned counsel learnt that the application was rejected on the very same date.

4. Shri Ghate, learned counsel has invited our attention to certified copy of the order sheets maintained by Family Court. A perusal thereof shows that initially an order showing issuance of notice to other side appears to have been passed and it was also signed. However, it has been scored off and another order sheet has been recorded purportedly on the very same date. There is some overwriting on figure 3 in date 13 but the fact that the order sheet has been written on the very same date is not in dispute. As per later order sheet, the proceedings are shown to have been rejected.

5. Shri Ghate, learned counsel submits that Family Court ought to have heard the parties before rejecting their application under Section 14(1) of the Act. When notice was issued initially, notice could not have been recalled and impugned order could not have been passed.

6. The facts show that after marriage on 19.04.2014, it was not consummated and parties stayed together only for 22 days. The period of separation of one year stipulated in law will expire on 12.05.2015.

7. In this situation, even if this Court issues notice to the respondent and the matter is restored back to file of Family Court for grant of an opportunity to the petitioner and the said respondent, it would be an empty formality. As the period of one year expires on 12.05.2015, though we are satisfied with the

grievance made by Shri Ghate, we are not inclined to interfere in writ jurisdiction.

8. Keeping contentions raised by Shri Ghate, learned counsel open for its due consideration if occasion thereof arises and with liberty to the petitioner / parties to file fresh proceedings on or after expiry of period of one year, we dispose of the present petition. However, there shall be no order as to costs.

JUDGE

JUDGE

*GS.