

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M No. 238 of 2018 (O&M)
Date of Decision: 17.5.2019

Manpreet Kaur

.....Appellant

Vs.

Navdeep Singh Gill

.....Respondent

CORAM: HON’BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: - Mr. Gurnam Singh, Advocate
for the appellant.

HARNARESH SINGH GILL, J.

This appeal has arisen out of the order dated 4.5.2017 passed by Additional District Judge, Jalandhar, vide which the petition filed by the both the parties under Section 13-B of the Hindu Marriage Act, 1955 ('Act' for short), for seeking dissolution of their marriage by mutual consent, has been dismissed.

The marriage of appellant Manpreet Kaur was solemnized with respondent Navdeep Singh Gill on 28.1.2017 as per Sikh rites. The status and place of residence of both appellant and respondent before the marriage and at the time of filing of the divorce petition was as under:-

	Husband		Wife	
	Status	Place of residence	Status	Place of residence
Before marriage	Unmarried	H.No. 921, Urban Estate, Phase-II, Jalandhar	Unmarried	H. No. 2360, Sector 20-C, Chandigarh

At the time of filing the petition	Married	H.No. 921, Urban Estate, Phase-II, Jalandhar	Married	H. No. 2360, Sector 20-C, Chandigarh
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It is stated that both the parties had lived together as husband and wife but from the very beginning of the matrimonial life, both of them had failed to adjust with each other and to further carry on the married life due to certain reasons and unbearable difference of temperament. Thereafter both started residing separately.

The appellant and respondent presented the petition for mutual divorce under Section 13-B of the Act as they had mutually agreed that the marriage should be dissolved. The said petition was dismissed by the Additional District Judge on 4.5.2017. While dismissing the said petition, the Court below has drawn a conclusion that there existed no exceptional circumstances, on the basis of which, any permission could be given to file a petition i.e. before expiry of the statutory period of one year from the date of marriage and that the allegations raised were general in nature.

We have heard the learned counsel for the appellant at length.

It has been submitted that there were confidential differences like unbearable difference of temperament crept the pious relationship of husband and wife and both have failed to adjust themselves in the company of each other. The differences further led to levelling of allegations and counter allegations between them. Thus, the problem was placed before the relatives and mediator and a compromise was effected between the parties and both of them agreed to get divorce on the basis of mutual consent as there were no chances of any reconciliation. Learned counsel for the appellant has laid stress on the fact that the divorce petition filed by the appellant and respondent was dismissed at the initial stage without even

proceeding to the second motion for getting the statements of the parties recorded after six months even though the divorce petition had been filed on the basis of mutual consent. Thus, the learned trial Court ought to have accepted the petition filed by the parties.

To decide the present controversy, it is important to consider the provisions of Section 13-B of the Act i.e. divorce by mutual consent, which is reproduced 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.

Section 13 of the Act is also to ascertain apart from the conditions, as to whether one year or more has passed since they have been living separately and have mutually agreed that the marriage should be dissolved.

Similarly, Section 14 of the Act pertains to filing of a petition for divorce not within the period of one year of the marriage and the same is reproduced hereunder:-

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 petitioner obtained leave to present the petition by any mis-representation 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.

As per Section 13-B of the Act, for dissolution of marriage by a

decree of divorce, a petition can be presented on the ground that the husband and wife have been living separately for the period of one year or more and have not been able to live together and that they have mutually agreed that the marriage should be dissolved. Accordingly, Section 14 of the Act spells out that it is only on the exceptional hardship of the parties, the petition can be presented before one year has elapsed since the date of marriage. In the said circumstances, the leave is to be obtained from the Court.

We have given our thoughtful consideration to the aforementioned statutory provisions and have gone through the divorce petition presented before the Court below for seeking decree of divorce by mutual consent and do not find any exceptional circumstance in the petition (Annexure P-1) for dissolution of marriage before the requisite period carved out in Section 14 of the Act has elapsed. The contents of the petition only reflect that the parties have failed to adjust with each other and are living separately and even the efforts of the parents and the relatives have failed to rehabilitate them. It has been further stated in the petition that there is no scope to carry on this marriage. To our mind, the divorce petition does not fulfill the ingredients of Section 13-B and Section 14 of the Act at this stage.

The Co-ordinate Bench of this Court in ***Sakshi versus Abhinandan Sharma 2015 (2) R.C.R. (Civil) 876*** has held as under:-

“In our opinion, there appears to be absolutely no illegality or perversity in the aforesaid findings recorded by the learned trial Court. There are no two thoughts over the proposition of law that only if the parties are able to make out that it was a case of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent that permission to file a

divorce petition before the expiry of statutory period of one year from the date of marriage can be granted. The facts and circumstances of the case in hand which led to initiation of a petition under [Section 13-B](#) of the Act of 1955 for a decree of divorce by mutual consent, were just normal. They failed to show and explain anything which would result in exceptional hardship to them if they were asked to wait for the statutory period of one year. The very spirit and object of the provisions of [Section 14](#) (1) of the Act of 1955 will be lost, if in such normal situation also the parties are allowed to part ways by obtaining a decree of divorce by mutual consent even before expiry of one year period from the date of marriage. The object underlying the provision is to give the couple time to breathe and reconcile, if possible, the dispute/ misunderstanding that had cropped up between them. Thus, the requirements enunciated in the provision have to be strictly observed and complied with unless the parties are able to make out a case of exceptional hardship.

Similarly in the case of ***Kulwinder Kaur versus Surinder***

Singh 2018 (1) R.C.R. (Civil) 269, this Court has observed as under:-

“Before moving on to the facts of this case, it needs to be mentioned that one of the requirements under [Section 13-B](#) of the H.M. Act for filing a petition for divorce by mutual consent, is that the parties should be residing separately for at least a period of one year preceding the institution of the petition. When a petition under [Section 13-B](#) of the H.M. Act stands instituted, what is expected and required of the Court, as per the provisions of [Section 13-B](#) read with [Section 23](#) of the H.M. Act is to ascertain as to whether one year has actually passed by since the parties have been residing separately and have not been cohabitating. The Court, therefore, is expected and required to satisfy itself that the said assertion was correct and there is no connivance or collusion and the consent has not been obtained by force, fraud or undue influence. ”

In the case in hand, the marriage between the parties was solemnized on 28.1.2017 and the petition under Section 13-B of the Act was presented on 21.4.2017 i.e. within three months from the date of marriage. Thus, the petition having not fulfilled the ingredients of Section 14 of the Act, does not fall under the ambit of Section 13-B of the Act as the petition under Section 13-B of the Act can only be presented:-

1. if both the parties have been living separately for the period of one year or more;
2. have not been able to live together; and
3. have mutually agreed that the marriage should be dissolved;

Thus, the Court is expected and required to satisfy itself that at the time of presentation of a petition for mutual divorce, one year has actually elapsed since the date of marriage and the parties have been residing separately and have not cohabited. However, the facts of the present case are contrary.

Thus, keeping in view the above facts and circumstances, we do not find any illegality and infirmity in the order dated 4.5.2017 passed by Additional District Judge, Jalandhar, which may warrant any interference by this Court.

The appeal is dismissed with no order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

May 14, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes