

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

WRIT PETITION NO.1227 OF 2021

Nikhil s/o Bapurao Durve
Aged 29 years, Occ. Service,
R/o Kuchana Colony, Qtr. No. B-99
Tah. Bhadrawati, Dist. Chandrapur

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Petitioner

Versus

Sau. Monali w/o Nikhil Durve
Aged 26 years, Occ. Household,
R/o C/o. Rupnarayan Sontakke,
Loni, Post – Matha, Tah. Korpana,
Dist. Chandrapur

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Respondent

Mr. A. S. Dhore, Advocate for petitioner.

CORAM : MANISH PITALE, J.

DATED : 22nd June, 2021

ORAL JUDGMENT

Hearing was conducted through Video Conferencing and the learned counsel agreed that the audio and visual quality was proper.

(2) By this petition, the petitioner has challenged order dated 23/11/2020, passed by the Court Civil Judge, Senior Division, Warora, whereby an application for leave to file divorce petition within one year of marriage under proviso to Section 14 of the Hindu Marriage Act, 1955, has

been rejected by holding that one year cooling period is mandatory as per the said provision.

(3) This Court had issued notice in this writ petition for final disposal on 05/03/2021, the office note dated 19/04/2021, shows that the sole respondent has been served but, the respondent has chosen not to appear before this Court.

(4) Although the period of one year from marriage will be over at the end of this month, the learned counsel for the petitioner submits that since an important question arises in this petition, it would be appropriate, if this Court considers the arguments of the petitioner with regard to the correctness or otherwise of the impugned order passed by the Court below.

(5) It is pointed out that the marriage between the petitioner and respondent in the present case took place on 30/06/2020, the petitioner filed an application for grant of divorce under Section 13(1)(i)(a) of the Hindu Marriage Act, read with Section 12 of the Act. Along with the said petition, the petitioner filed an application for leave to file the divorce petition within one year of marriage under Section 14 of the said Act. The said application

was registered on 23/11/2020, by the Court below. As noted above, by order dated 23/11/2020, itself the application was rejected. The learned counsel for the petitioner invited attention of this Court to Section 14 of the said Act, particularly to proviso to Sub Section (1) thereof, and contended that the observation made in the impugned order that the period of one year from marriage is mandatory, is erroneous.

(6) It is further brought to the notice of this Court that appropriate rules have been framed by this Court in terms of proviso to Section 14(1) of the said Act, called The Bombay High Court Hindu Marriage and Divorce Rules, 1955. Rule 10 of the said Rules specifically pertains to application for leave to file divorce petition, within one year of marriage, as contemplated under Section 14 of the aforesaid Act. In order to consider the contention raised on behalf of the petitioner, it would be appropriate to advert to the relevant provision of law. Section 14 of the aforesaid Act reads as follows :-

“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 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].”

(7) As noted above, this Court has already framed relevant rules and Rule 10 thereof pertains to an application for leave as contemplated under the above quoted provision.

(8) A proper interpretation of the proviso to Section 14(1) of the said Act, clearly demonstrates that the period of one year cannot be said to be mandatory. Although Section 14 opens with the words “no petition for

divorce to be presented within one year of marriage”, the proviso to Sub Section (1) thereof clearly carves out exceptions to the aforesaid period of one year. Therefore, if an applicant is able to demonstrate that his or her case falls within the exceptions carved out in the proviso to Section 14 of the said Act, application for leave to file divorce petition within one year of marriage can be granted and to that extent Section 14 cannot be said to be mandatory under all circumstances.

(9) The Court below obviously failed to appreciate this aspect of the matter while passing the impugned order. In fact, the impugned order is very cryptic without any discussion on these aspects of the matter, the impugned order reads as follows :-

“Perused the application. One year cooling period is mandatory as per Section 14 of the H. M. Act. Hence, this application is hereby rejected.”

(10) This Court is of the opinion that the Court below completely failed to appreciate the true scope of Section 14 of the said Act, particularly, proviso to Sub Section (1) thereof, thereby erroneously holding that the period of one year is mandatory.

(11) Since the Court below has not considered the application for leave to file divorce petition within one year, filed by the petitioner herein and there is no discussion on the merits of the application and as to whether it falls within proviso to Section 14(1) of the said Act, it would be appropriate that the impugned order is set aside and the application is restored before the Court below for consideration on merits.

(12) Accordingly, the writ petition is allowed. The order impugned is set aside and the Court below is directed to consider the application for leave to file divorce petition within one year bearing M.J.C. No.54 of 2020 filed by the petitioner on merits. The Court below shall consider and dispose of the said application within a period of four weeks from the day when the order of this Court is placed before the aforesaid Court.

[MANISH PITALE J.]