

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No.3473 of 2021 (O&M)
Date of decision: 21.12.2021

Priyanka
Vs. ...Appellant

Pardeep ...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Munish Kumar Garg, Advocate,
for the appellant.

Ritu Bahri, J. (Oral)

The appellant has come up in appeal against the order dated 24.11.2021 passed by the Principal Judge, Family Court, Fatehabad, whereby application (which was filed along with petition under Section 13-B of the Hindu Marriage Act seeking dissolution of marriage by way of mutual consent) for waiving off the stipulated period of minimum one year of separation prior to filing of the petition under Section 13-B of Hindu Marriage Act, 1955, has been dismissed.

A perusal of the impugned order shows that marriage of the parties was solemnized on 23.08.2015 according to Hindu rites and rituals at Shiv Mandir, Chandigarh. Out of this wedlock, two children were born. Later on, differences cropped up between the couple and they could not live together. They are residing separately since 17.07.2021. Ultimately, they filed a joint petition under Section 13-B of the Hindu Marriage Act on 24.11.2021 seeking decree of divorce by way of mutual consent. Along with the said petition, they also filed an application with a prayer that mandatory period of one year before filing the petition under Section 13-B of the Act be

reduced/condoned. However, the Family Court, Fatehabad has not allowed the said application as well as petition under Section 13-B of the Act.

For the purpose presenting a petition under Section 13-B of the Hindu Marriage Act before expiry of one year, Section 14 of this Act would be relevant, which reads as under:-

“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.”

Proviso to the above said section lays down that in case of exceptional hardship or exceptional depravity, if it appears to the Court, the time of one year can be reduced. A Coordinate Bench of this Court in

(Civil) 198 was considering a case, where an application under Section 14 of the Hindu Marriage Act had been dismissed and the parties were not allowed to present the petition under Section 13-B of the Act before expiry of one year. In that case, the parties had lived together as husband and wife for about three months after marriage. Both were young and keeping in view that they were at the marriageable age, condonation of the period of one year was allowed. It was further observed that such exceptional hardship and depravity has to be established by the petitioner(s) in order to avail the benefit of the provision of Section 14 (1) of the Act. In this regard, further reference can be made to the judgment passed by Hon'ble the Supreme Court in **Amardeep Singh Vs. Harveen Kaur**, Civil Appeal No.11158 of 2017 (decided on 12.09.2017).

In the facts of the present case, marriage between the parties was solemnized on 23.08.2015. Appellant-Priyanka is 24 years of age and respondent-Pardeep is 29 years of age. Both are young persons. They are residing separately since 17.07.2021. Moreover, as per the details given in their petition under Section 13-B of the Act (Annexure A-1), both the parties have already received all the articles given by them at the time of marriage. It has been further stated that none of them will claim anything with regard to the past or future maintenance. It has been decided that both the children namely Lavith and Chakshith, will remain in the custody of their father-Pardeep. Since, the parties have already resolved their disputes, this is the sufficient ground to allow their application for waiving off the mandatory period of one year. Moreover, as per petition filed under Section 13-B of the Hindu Marriage Act (Annexure A-1), the mutual agreement has been duly complied with by the parties and nothing is due against each other.

Today, both the parties (Priyanka and Pardeep) have come present before the Court. Photocopies of their Aadhaar cards are taken on record as

Annexures A-3 and A-4. On a specific query put to appellant-Priyanka, she stated that she has no grievance against the respondent-Pardeep and nothing is due against him. Similarly, respondent-Pardeep has stated that no dispute is left between the parties and they be granted decree of divorce under Section 13-B of the Hindu Marriage Act. For all intents and purposes, the conditions as reflected in their petition under Section 13-B of the Hindu Marriage Act (Annexure A-1) have duly been complied with. Keeping in view the prevailing COVID-19 situation, this Court does not consider it necessary to ask the parties to get their statements recorded before the Family Court, as it would cause unnecessary harassment to the parties. They will have to engage counsel afresh for the above said purpose. The statements made before this Court are sufficient to grant a decree of divorce under Section 13-B of the Hindu Marriage Act.

In view of the above discussion, the impugned order dated 24.11.2021 is set aside. Petition under Section 13-B along with application for waiting off the mandatory period of living separately for one year, is allowed. The parties are granted a decree of divorce by mutual consent under Section 13-B of the Act. Decree sheet be drawn accordingly.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

21.12.2021
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No