

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

FAO-774-2023

Date of Decision: February 16, 2023

SIMRAN

..... Appellant

Versus

VINAY

..... Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Davneet Sangwan, Advocate for the appellant.

Mr. Ashish Sindher, Advocate for the respondent.

LISA GILL, J.

Prayer in this appeal is for setting aside order dated 17.01.2023 passed by the learned Additional Principal Judge, Family Court, Camp Court, Sub Division Bilaspur, District Yamuna Nagar, whereby petition under Section 13B of the Hindu Marriage Act (for short – ‘the Act’) filed by the parties has been dismissed.

Mr. Ashish Sindher, Advocate appears on behalf of the respondent and files Power of Attorney. Same is taken on record subject to just exceptions.

Parties filed petition under Section 13B of Hindu Marriage Act, 1955 seeking dissolution of their marriage solemnized on 18.01.2022. It is pleaded in the said petition that marriage between the parties was solemnized on 18.01.2022 and they started living together at their matrimonial home. Marriage was consummated but no child was born out of this wedlock. Differences arose between the parties and they started living

separately since 20.03.2022 and ultimately petition under Section 13B of the Act was filed by them on 17.01.2023. Their petition under Section 13B of the Act has been dismissed by the learned Family Court vide impugned order dated 17.01.2023 holding the petition to be premature while referring to provisions of Section 14(1) of the Act.

It is relevant to refer to Section 13B and Section 14 (1) of the Act, which read 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 solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 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petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized 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 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.”

Reference to Section 14 (1) of the act by the learned Family Court may be misplaced. However, the fact remains that petition under Section 13B of the Act was filed before the period of one year of the parties living separately had elapsed. It is to be noted that parties are pleaded to be living separately since 20.03.2022. Petition under Section 13B was admittedly filed on 17.01.2023.

At this stage, learned counsel for the parties submit that as the period of one year since the parties are living separately shall be elapsing on 20.03.2023, present appeal be permitted to be withdrawn with liberty to the parties to file afresh after the stipulated period.

Present appeal is, accordingly, dismissed as withdrawn with liberty as aforementioned.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

February 16, 2023

rts

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