

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1894 of 2023 (O&M)
Date of Decision:09.05.2023

Manjeet

.....Appellant

Versus

Tamanna

..... Respondent

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

Present: Mr. M.S.Dalal, Advocate
for the appellant.

Mr. Arun Sharma, Advocate
for the respondent.

LISA GILL, J(Oral).

1. Both the appellant and respondent are aggrieved of order dated 12.04.2023, passed by the learned Family Court, Kaithal, whereby their petition under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act') has been dismissed on the ground that the same has been filed prior to one year of separation from the date of marriage.

2. Brief facts of the matter are that marriage between the parties was solemnized on 03.06.2022 and they are living separate since 07.06.2022 itself. Despite strenuous efforts including intervention of the respectable etc., they could not resume matrimonial ties. All disputes pertaining to their matrimonial life were settled including permanent alimony. No child was born from this wedlock. No dispute remains pending between them. They

sought dissolution of their marriage by filing petition under Section 13-B of the Act. Application under Section 14 of the Act was also filed.

3. Learned Family Court, Kaithal, however, found no ground for waiver of the statutory period in terms of Section 14 of the Act and dismissed the petition under Section 13-B of the Act.

4. Aggrieved therefrom, present appeal has been filed.

5. Learned counsel for the parties submit that marriage between the parties was solemnized on 03.06.2022 and they are living separate from each other since 07.06.2022 itself. Despite strenuous efforts including intervention of the respectable etc., they could not resume matrimonial ties. No child was born from this wedlock. Petition under Section 13-B of the Act, was filed on 28.03.2023. All disputes pertaining to their matrimonial life were settled including that regarding permanent alimony. No dispute remains pending between them. Learned Family Court, Kaithal, has thus grossly erred in not waiving statutory period in terms of Section 14 of the Act while clearly ignoring the exceptional hardship being caused to parties. It is thus prayed that the present appeal be allowed.

5. We have heard learned counsel for the parties and have gone through the file with their able assistance; besides interacting with the parties.

6. Appellant as well as respondent, duly identified by their counsel are present in Court. They stated that they are living separately since 07.06.2022 and it is not possible for them to live together despite earnest efforts made. It is affirmed that all disputes between them have been genuinely settled. Respondent-wife states that she wishes to pursue her BSc. Nursing from the Australian College of Applied Professions (ACAP), College, Brisbane (Australia), classes whereof commence on 03.07.2023.

Respondent-wife stated that she received her Visa on 28.02.2023 and that she wishes to submit complete documentation etc., for her admission wherein she would want her status to be reflected as unmarried/single so as to avoid any complications at a later stage, in her study abroad.

7. Affidavit dated 08.05.2023, of the respondent-wife along with photocopies of her Registration and Diploma Certificate, are taken on record subject to just exceptions.

8. Appellant-husband affirms the same.

9. It is a matter of record that parties presented a petition under Section 13-B of the Act, seeking dissolution of their marriage prior to expiry of one year from their marriage, which was admittedly solemnized on 03.06.2022.

10. At this stage, it is relevant to refer to Section 13-B and Section 14 of the Act, which read as under:-

Section-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 (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 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.

[\(2\)](#) 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.

11. The question whether benefit of proviso to Section 14 (1) of the Act, can be availed of to present a petition under Section 13-B of the Act for

divorce by mutual consent, even though one of the essential ingredients of Section 13-B of the Act is that the parties should live separately for a period of one year or more is no longer *res integra* and has been answered in favour of the parties. Gainful reference can be made to the Division Bench of this High Court in **Mandeep Kaur Bajwa Vs. Chetanjeet Singh Randhawa, 2015 (40) RCR (Civil) 198** and **Shivani Yadav Vs. Amit Yadav, 2021 (4) RCR (Civil) 280**.

12. In the instant case, it is to be noted that the parties are still young, both the husband and wife being 25 ½ years old. After marriage, they barely lived with each other for about four (04) days. It is categorically stated that the parties seek to move on in their lives as there is no possibility whatsoever of any reconciliation between them which may lead to resumption of matrimonial ties. The wife has categorically stated that her future prospects of further study may be hampered. It is to be noticed that the parties are mature enough to take a decision in this respect and once it is apparent that they are unable to reconcile their differences, it indeed amounts to an exceptional hardship being caused to the parties in case their petition under Section 13-B of the Act, is not entertained by the learned Family Court, Kaithal, prior to expiry of the statutory period of one year.

13. It has been reiterated before us that the parties are unable to reconcile their differences and still wish for dissolution of their marriage by mutual consent.

14. Keeping in view the facts and circumstances as above, impugned order dated 12.04.2023, passed by the learned Family Court, Kaithal, is set aside. Petition under Section 13-B of the Act stands revived. Parties are directed to appear before the learned Family Court, Kaithal on 17.05.2023 for recording of their statements at first motion in accordance

with law. In case application seeking waiver of statutory period of six months for recording of second motion is filed, same be considered and disposed of sympathetically in accordance with law.

15. Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

May 09, 2023.
s.khan

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