

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4489 of 2022(O&M)

Date of Decision:28.02.2023

Supinder Singh

.....Appellant

Versus

Amandeep Kaur

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Amit Arora, Advocate
for the appellant.Mr. I.S.Brar, Advocate
for the respondent.

LISA GILL, J(Oral).

Prayer in this appeal is for setting aside order dated 06.09.2022, passed by the learned Family Court, Faridkot, whereby petition under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the parties before us, seeking dissolution of the marriage, has been dismissed being premature. It is observed by the learned Family Court, Faridkot, that marriage of the parties was solemnized on 22.04.2022, but petition under Section 13-B of the Act, was filed on 31.08.2022. No ground to accept the petition prior to lapse of one year from the date of marriage was found in terms of Section 14 of the Act.

Brief facts of the matter are that marriage of the parties was admittedly solemnized on 22.04.2022. It is averred that certain differences cropped up between them. Despite strenuous efforts on their part as well as intervention of respectable and family members, their differences could not be resolved and it became impossible for them to live together. It is further averred that the parties were living separately since 02.05.2022 and it was

now impossible for them to live together as husband and wife. 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.

Learned Family Court, Faridkot, found no merit in the application under Section 14 of the Act and petition was accordingly dismissed being premature without prejudice to any petition which may be filed by the parties after expiry of the statutory period of one year.

Aggrieved therefrom, present appeal has been filed.

Learned counsel for both the husband and wife submit that the impugned order dated 06.09.2022, has been incorrectly passed causing manifest injustice to the parties who seek to carry on with their lives. It is reiterated that there is no possibility whatsoever for reconciliation between the parties and consequent resumption of matrimonial ties. It is thus prayed by both learned counsel for the parties that this appeal be allowed.

Heard learned counsel for the parties and have gone through the file with their able assistance.

It is a matter of record that the 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 22.04.2022.

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.

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**.

In the instant case, it is to be noted that the parties are still young, the husband being 30 years old, the wife being 26 years old and after marriage, they barely lived with each other for about ten (10) days. It is categorically stated that the parties seek to move further in their life as there is no possibility whatsoever of any reconciliation between them leading to resumption of matrimonial ties. It is to be noticed that the parties are indeed 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, Faridkot, prior to expiry of the statutory period of one year.

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.

Keeping in view the facts and circumstances as above, impugned order dated 06.09.2022, passed by the learned Family Court, Faridkot, is set aside. Petition under Section 13-B of the Act stands revived. Parties are directed to appear before the learned Family Court, Faridkot on 15.03.2023 for recording of their statements at first motion in accordance with law.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

February 28, 2023.

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.