

FAO-5588-2022 (O&M)

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

**CM-18491-CII-2022 in/and
FAO-5588-2022**

Date of Decision: January 04, 2023

LALIT

..... Appellant

Versus

SADHNA AND OTHERS

..... Respondents

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

Present: Mr. Bhim Singh, Advocate for the appellant.

LISA GILL, J.

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For the reasons mentioned in the application, accompanied by an affidavit of learned counsel for the appellant as well as arguments addressed, delay of 27 days in re-filing of the appeal is condoned.

Application is disposed of, accordingly.

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This appeal has been filed challenging order dated 10.08.2022 passed by the learned Additional Principal Judge, Family Court, Gurugram, whereby appellant's petition under Section 12 (i) (c) of the Hindu Marriage Act (for short – 'the Act') has been dismissed in limine.

Brief facts necessary for adjudication of the matter are that the appellant – husband filed the petition under Section 12(i) (c) of the Act with pleadings that marriage of the appellant solemnised with respondent No. 1

on 20.02.2022 was a nullity on the ground that appellant's consent had been obtained by fraud i.e. at the time of their engagement, the appellant had met a different girl but marriage was performed with another i.e. respondent No.

1. It was further pleaded that no cohabitation took place between the parties and that respondent No. 1 is residing with her parents since marriage on 20.02.2022.

As the petition was filed prior to expiry of one year from the marriage, an application was filed by the petitioner under Section 14 of the Act for waiving the statutory period of one year.

Learned Family Court dismissed the petition under Section 12 (i) (c) of the Act filed by the petitioner in limine, while observing that marriage cannot be annulled just on the ground of appearance etc. of the respondent and furthermore it found no ground whatsoever to waive the statutory period of one year, as it did not find any case of exceptional hardship to the appellant or exceptional depravity on the part of the respondent.

Relevant part of order dated 10.08.2022 reads as under:-

“ Further, the entire petition revolves around the looks of respondent. As per Indian Society, every girl gives a better appearance at the time of negotiation but it does not mean that all marriages should be annulled just on the ground of appearance. Further Section 14 of HMA begins with the words ‘notwithstanding’ meaning thereby it is a ‘non-obstante’ clause, that imposes an embargo upon the court to exercise discretionary power. Though a proviso has been attached with the Section gives some authority to the Court to waive the statutory time that too in case of ‘exceptional hardship’ to the petitioner or of exceptional depravity on the part of the respondent. But none of the grounds have been fulfilled by the

Learned counsel for the appellant argues that the learned Family Court has grossly erred in firstly not waiving the statutory period of one year and furthermore by proceeding to dismiss the petition under Section 12(i)(c) of the Act on merits as well. Learned counsel for the appellant submits that such perfunctory and summary dismissal of the petition filed by the appellant on merits, is not justified and has dealt grave injustice to the appellant. It is, thus, prayed that this appeal be allowed.

Appellant admittedly filed the petition under Section 12 (i)(c) of the Act, which reads as under:-

c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978), the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent; or

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integrity of this document

in case of exceptional hardship to the appellant or exceptional depravity on the part of the respondent, the Court may grant leave to present the petition before the expiry of one year. Section 14 of the Act is reproduced as hereunder:-

“14.(1) 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 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.”

In our considered opinion, learned Family Court has correctly refused to waive the statutory period in the given facts and circumstances and in fact, no serious argument was raised on this count as the statutory period would be coming to an end on 20.02.2023. However, we find merit in the argument raised by learned counsel for the appellant that learned Family Court should not have proceeded to dismiss the appeal on merits as well in

such a perfunctory manner. In our considered opinion, dismissal of the

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petition on merits in this manner is unwarranted. Dismissal of the application under Section 14 of the Act should have been without prejudice to the right of the petitioner to file a fresh petition after expiry of one year from the date of marriage.

Keeping in view the fact that petition under Section 12 (i)(c) of the Act was dismissed in limine by the learned Family Court without issuance of any notice to the respondent, notice is not being issued to the respondent in the present appeal.

Keeping in view the facts and circumstances of this case, order dated 10.08.2022 is set aside to the extent of dismissal of the petition on the merits of the matter. Liberty is afforded to the appellant to file a fresh petition after expiry of period of one year from the date of marriage, which needless to say would be decided by the learned Family Court in accordance with law.

With the said modification in order dated 10.08.2022, this appeal is disposed of.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

January 04, 2023
rts

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