

FAO-6479-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CM-22404-CII-2023 in/and
FAO-6479-2023 (O&M)

Date of decision: 19.12.2023

Mandeep Kaur

....Appellant

V/s

Rajiv Girdhar

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH

HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Bhupinder Banga, Advocate and
Mr. Imnran Ahmad Ali, Advocate for the appellant.

Mr. H.S. Deol, Advocate and
Ms. Amandeep Kaur, Advocate for the respondent.

SUMEET GOEL, J.

CM-22404-CII-2023

For the reasons stated in the application which is duly supported by an affidavit of the appellant and with there being no opposition in this regard by learned counsel for respondent, delay of 37 days in filing the present appeal is condoned.

CM stands disposed of.

FAO-6479-2023

1. The present appeal has been filed by the wife against the judgment and decree dated 24.07.2023 passed by learned Principal Judge, Family Court, SBS Nagar, Punjab (hereinafter referred to as the 'Family Court') whereby the joint application filed by the wife and husband under Section 14(1) (hereinafter referred as 'application in question') of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') has been dismissed

and resultantly the petition filed under Section 13-B of the Act for grant of divorce by mutual consent (hereinafter referred to as 'main petition') has been disposed of being not maintainable at that stage.

2. Succinctly facts first, as stated in the pleadings including affidavits by rival parties.

2.1 The wife and husband had jointly preferred a petition for dissolution of their marriage by grant of decree of divorce by way of mutual consent. It had been pleaded in the petition that the marriage between the parties took place on 27.03.2023, according to Hindu religious rites and ceremonies, at Banga in District SBS Nagar, Punjab. After the marriage, both the parties cohabited together at Bhiwani in Haryana wherein the marriage between the parties was consummated. No child was born out of the wedlock. It was further pleaded that due to different temperamental nature, the parties could not adjust with each other in the matrimonial life and started living separately w.e.f. 13.04.2023. Efforts were made with the intervention of relatives and friends, but the parties could not reconcile. It was decided that the parties would separate ways and an amount of Rs. 15.00 lacs was settled as permanent alimony (towards past, present and future alimony) for the wife which would be paid by the husband. Accordingly, a decree for grant of divorce by way of mutual consent under Section 13-B of the Act was sought for. Along with the said main petition an application under Section 14(1) of the Act was filed seeking permission to file the main petition within one year from the date of marriage. In this application, it was pleaded that the parties had not been able to adjust with each other in their matrimonial life and started living separately since

13.04.2023. Efforts made for reconciliation between the parties failed and thus the necessity arose for filing the petition under Section 13-B of the Act within one year of date of marriage.

2.2 Vide impugned judgment and decree, the learned Family Court dismissed the application in question under Section 14(1) of the Act and resultantly the main petition under Section 13-B of the Act was disposed of as being not maintainable at that stage.

3. Learned counsel for the appellant-wife has submitted that the learned Family Court ought to have allowed the application, under Section 14(1) of the Act, for grant of permission to file the petition under Section 13-B of the act within one year of marriage; keeping in view the short duration of period when the parties had cohabited together, age of the parties as also the reconciliation efforts having failed.

4 Learned counsel for the respondent-husband has also submitted on similar lines and has supported the case of the appellant-wife in this regard.

5. We have heard learned counsel for the parties and perused the record with their assistance.

6. The prime issue for determination in present appeal is as to whether learned Family Court ought to have granted permission under Section 14(1) of the Act to file petition for divorce by mutual consent under Section 13-B of the Act within one year of date of marriage.

Relevant Statute

7. Section 13-B of the Hindu Marriage Act, 1955 reads as under:-

“13-B. 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 of the Hindu Marriage Act, 1955 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, 4 [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].

Relevant Case Law

8. The precedents, germane to the issue(s) involved, are as follows:

(i) A Five Judges Bench of the Hon'ble Supreme Court in judgment titled as ***Shilpa Sailesh vs. Varun Sreenivasan, 2023(3) RCR (Civil) 107***, has held as under:-

“17. Analysing the provisions of sub-section (2) to Section 13-B of the Hindu Marriage Act, this Court in **Amardeep Singh v. Harveen Kaur (2017) 8 SCC 746** went into the question of whether the cooling off period of six months is mandatory or discretionary. It was held that the cooling off period can be waived by the court where the proceedings have remained pending for long in the courts, these being cases of exceptional situations. It was held thus:

“14. The learned Amicus Curiae submitted that waiting period enshrined under Section 13-B(2) of the Act is directory and can be waived by the court where proceedings are pending, in exceptional situations. This view is supported by the judgments of the Andhra Pradesh High Court in **K. Omprakash v. K. Nalini**, Karnataka High Court in **Roopa Reddy v. Prabhakar Reddy**, Delhi High Court in **Dhanjit Vadra v. Beena Vadra** and Madhya Pradesh High Court in **Dineshkumar Shukla v. Neeta**. Contrary view has been taken by the Kerala High Court in **M. Krishna Preetha v. Jayan Moorkkanatt**. It was submitted that Section 13-B(1) relates to jurisdiction of the court and the petition is maintainable only if the parties are living separately for a period of one year or more and if they have not been able to live together and have agreed that the marriage be dissolved. Section 13-B(2) is procedural. He submitted that the discretion to waive the period is a guided discretion by consideration of interest of justice where there is no chance of reconciliation and parties were already separated for a longer period or contesting proceedings for a period longer than the period mentioned in Section 13-B(2). Thus, the court should consider the questions:

- (i) How long parties have been married?
- (ii) How long litigation is pending?
- (iii) How long they have been staying apart?
- (iv) Are there any other proceedings between the parties?
- (v) Have the parties attended mediation/conciliation?
- (vi) Have the parties arrived at genuine settlement which takes care of alimony, custody of child or any other pending issues between the parties?

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19. Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:

- (i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;
- (ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;
- (iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;
- (iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions

are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.”

- (ii) In a judgment titled as ***Kamal Kamboj vs. Kajal Kamboj***, in FAO-4934-2022, decided on 21.11.2022, a Division Bench of this Court has held as under:-

*“4. 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 **Mandeep Kaur Bajwa vs. Chetanjeet Singh Randhawa, 2015 (40) RCR (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.”*

- (iii) The Delhi High Court in judgment titled as ***Sankalp Singh vs. Prathana Chandra, 2013(18) RCR (Civil) 752*** held as under:-

“30. A more liberal construction can envisage the application of the proviso to Section 14 (1) of the said Act without compromising on the essential ingredients of Section 13B (1) of the said Act. This is possible by ensuring that none of the three essential ingredients are compromised. Thus, parties should have been living separately for one (1) year or more, that they have not been able to live together and have mutually agreed that the marriage should be dissolved. However, the dissolution of marriage has to take effect only after the hiatus period of six (6) to eighteen (18) months, on the second motion being filed. Thus, before such a decree of divorce is passed post second motion the period of one (1) year of separation ought to have elapsed but in order to present the first motion, the requirement of one (1) year separation would not apply provided it meets the parameters of proviso to Section 14 (1) of the said Act. This view would not compromise on the essential ingredients of any part of Section 13B of the said Act and simultaneously respect the wisdom of the legislature which enacted Section 13B of the said Act and incorporated it by insertion with sub-section (1) beginning with "Subject to the provisions of this Act" which would include Section 14. Not only that Section 14 of the said Act itself begins with a "Notwithstanding" clause. This would, thus, be the harmonious construction of the provisions of the said Act which would enable to give meaning to all the relevant provisions of the said Act without compromising the ingredients of any. Such a course of action is possible especially because there will not be a waiver of minimum six (6) months hiatus period between the grant of first motion and the second motion being presented with the additional condition under Section 13B (1) of the said Act that even if the first motion is presented within the first year of marriage as per the satisfaction of proviso to Section 14 (1) of the said Act, the decree of divorce would only be granted once the period of one (1) year has elapsed from the separation.”

Analysis (re legal principles)

9. Marriage, as per Hindu Law, is sacred in nature. The Hindu Marriage Act, 1955 was enacted to codify the law relating to marriage among Hindus. It was broadly based on maxim '*conjunctio maritum perminae est de nature*' i.e. to keep husband and wife together is the law of nature & maxim '*viret unum consentur in lege una persona*' i.e. husband and wife are considered one in law. However, Section 13-B of the Act was introduced in the Act by way of Act 68 of 1976. An analytical perusal of this provision shows that the same is irenic in essence as compared to Section 13 of the Act which is based on fault proving philosophy. Hence provision of Section 13-B deserves to be interpreted and applied accordingly since it is aimed at bringing about a peaceful and mutually agreeable final solution to matrimonial discord.

9.1 Further the interplay of Section 13-B and Section 14 of the Act, when viewed in backdrop of statutory scheme of the Act, unequivocally shows that proviso to Section 14(1) of the Act does fully apply to Section 13-B of the Act as well. This legislative intent is clearly exhibited by words "Notwithstanding anything contained in this Act" stipulated in Section 14(1) of the Act. The aim and objective behind insertion of Section 13-B in the Act, vide the amendment Act of 1976, further amplifies this interpretation. In other words, the parties are entitled to seek permission from Court for filing a petition under Section 13-B of the Act within one year of date of marriage in accordance with Section 14 of the Act.

9.2 In order to successfully get permission to file a petition under Section 13-B of the Act within one year of date of marriage, the parties

ought to fulfill the pre-requisites as provided under Section 14 of the Act. The Court while considering the prayer for such permission, ought to be satisfied that there exists requisite grounds to accord such permission & there is no concealment/misrepresentation on behalf of parties. No detailed enquiry, as akin to a preliminary trial, is ordinarily required to be undertaken by the Court while considering an application under Section 14 of the Act. The Court would be well within its discretion to look into the pleadings and affidavits presented before it for such evaluation.

10. The principles of law, as can be culled out from abovesaid discussion, are enumerated as below:

- I. Section 14 of the Act applies completely to Section 13-B of the Act as well i.e. parties can apply for permission, to file a petition for divorce by way of mutual consent, within one year of date of marriage.
- II. The Court is not to ordinarily enter into an elaborate enquiry while considering an application under Section 14(1) of the Act especially with respect to a petition under Section 13-B of the Act since the Court is required to take a pacifist view point when dealing with a case under Section 13-B of the Act. The Court would generally consider the pleadings and material placed before it to take a view. However, if the facts and circumstances of a case so warrant, Court may undertake an elaborate enquiry.
- III. While granting or refusing permission under Section 14(1) of the Act, the Court ought to consider the following factors:
 - (a) How long the parties have been married?
 - (b) How long they have been staying apart?

- (c) Are there any other proceedings between the parties? If yes, what is the status of such proceedings and whether all such other proceedings are also being settled?
- (d) Whether declining of such permission will prolong the agony of parties?
- (e) Whether there is any misrepresentation or concealment of material facts by parties while seeking such permission?
- (f) Whether there is any child born out of the wedlock? If yes, how the interest of child is being secured?
- (g) Whether there is any reasonable probability of reconciliation between parties?
- (h) Age, educational qualification and economic position of the parties especially the wife?

The factors enumerated hereinabove are illustrative in nature and not exhaustive. The Court may consider such other factor(s) as it deems appropriate in the facts and circumstances of a given case.

Analysis (re facts of the present case)

11. Now we revert back to the facts of the present case.

11.1 The parties to the *lis* were married on 27.03.2023 and as per their admitted stand they have started living separately, as decided mutually amongst themselves, from 13.04.2023 onwards. There is no child born out of this wedlock. The wife is stated to be about 37 years old whereas husband is stated to be aged about 41 years. Both the spouses are well educated. The re-conciliation efforts made, by relatives and friends, have failed. There appears to be no scope of rehabilitation of matrimonial life. The mutual consent divorce petition enumerates no allegation against each other.

11.2 In the present case, the parties have lived together as husband and wife for a very short span after marriage i.e. only for about 15 days, the

parties are young and educated, the reconciliation attempts have failed & the parties have bright prospects of resettlement in their respective lives. Therefore, in the entirety of factual conspectus of the matter, the permission as sought for by parties ought to have been granted by the learned Family Court.

Decision

12. Resultantly, the appeal is allowed; the impugned judgment and decree dated 24.07.2023 is set-aside & permission is granted to the parties under Section 14(1) of the Act to file the petition under Section 13-B of the Act before the expiry of period of one year from date of marriage. Further the learned Family Court is directed to expeditiously proceed further with the petition under Section 13-B of the Act in accordance with law.

(SUMEET GOEL)
JUDGE

(SUDHIR SINGH)
JUDGE

December 19, 2023
Ajay

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