



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

FAMILY COURT APPEAL NO. 6/2024.

1.Shri Chirag s/o Devendra Khandelwal,
Aged about 29 years, Occupation –
Service, resident of 153, Satyamani Kunj,
Wardhaman Nagar, Nagpur 440008.

2.Mrs. Neha w/o Chirag Khandelwal,
[previously known as Neha d/o Ashok
Rajoria]. Aged abut 27 years,
Occupation Household, resident of
126, Ansari Road, Boddombazar,
Near Jado Babu Chowk, Hazaribagh,
Jharkhand 825301.
(Original Petitioners)

... **APPELLANTS.**

VERSUS

1.Nil.
(Original Respondent)

... **RESPONDENT.**

Mr. Atul Pande, Advocate for Appellants.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : APRIL 26, 2024.

Rgd.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. Admit. Considering the nature of cause canvassed, the appeal is taken up for final disposal.

3. This is a joint appeal raising a challenge to the order passed by the Family Court, Nagpur dated 12.10.2023, by which the application filed by the appellants seeking a relief under Section 14[1] of the Hindu Marriage Act, has been rejected. In short, the appellants, husband and wife, have jointly applied to the Family Court seeking a decree of divorce in terms of Section 13-B of the Hindu Marriage Act. However, as they have applied for divorce prior to the statutory period of one year from the date of marriage, they have urged the Family Court to grant leave and permit to file the same.

4. The parties got married on 23.06.2023, and within one month, due to matrimonial dispute they started to live separately.

Rgd.

Several efforts have been made by their friends and relatives to resolve the dispute, but, failed. Both were of determined mind that they cannot live together, and therefore, took a decision to go for mutual divorce.

5. In such a background, they have applied under Section 13-B of the Hindu Marriage Act, however, Section 14[1] of the Act provides that no petition for divorce should be entertained within a period of one year from the date of marriage. Likewise, Section 13-B of the Act also contemplates that a petition for mutual divorce can be filed provided that the parties are residing separately for a period of one year. The Family Court after considering these factual aspects was pleased to decline to exercise its discretion to curtail the mandatory period by treating the case as a case of exceptional hardship. The Family Court in paragraph no.5 of the impugned order has merely stated that the application does not show any exceptional circumstance which permit the Court to exercise its discretion. The Family Court has also observed that though appellants have stated about hardship, but, said hardship is not

coming within the category of exceptional one. Thus, on facts the urge of appellants came to be rejected.

6. This Court in its decision in case of **Pratik Madhukarrao Laswante and Namrata Pratik Laswante – Writ Petition No.286/2022 decided on 08.02.2022**, has considered the law in this regard, particularly with reference to Section 14[1], and it has been observed that when there is an irretrievable breakdown, it has to be treated as an exceptional hardship. It emerges from the pleadings that hardly for a month the parties have lived together. Several attempts were made by the relatives, as well as the councilor, however, no fruitful purpose came out of the attempt. Finally both the parties with determined mind, decided to get separated and have also executed memorandum of understanding carving out the terms. We have to see that this a case having exceptional circumstances, since both have decided to stick up with their decision to sever the matrimonial ties. Besides that, by the time the period of 10 months has elapsed from the filing of the petition. Having regard to all these facts, we hereby quash and set aside the impugned order dated

Rgd.

12.10.2023 passed below Exh.1 in Petition Civil M.A. No.96/2023 by the Judge, Family Court No.2, Nagpur. The application filed seeking leave to entertain the petition for mutual divorce within one year of the marriage, as an exceptional circumstances, stands allowed. The original petition is restored back to the file of Family Court, Nagpur with a direction that the said Court shall consider the case as exceptional, since sufficient time has been lapsed. The Family Court may positively consider waiver of cooling period in above circumstances.

Both the parties to appear before the Family Court, Nagpur on 02.05.2024.

7. First Appeal is accordingly allowed in aforesaid terms, with no order as to costs.

JUDGE

JUDGE