

2024:PHHC:123989-DB



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

FAO-3945-2024 (O&M)

Date of decision: 17.09.2024

Chhvi Garg

....Appellant

versus

Mukesh

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Aman Gautam, Advocate,
for appellant.

Mr. Deepak Vashishth, Advocate,
for respondent.

SUDHIR SINGH, J.

Present appeal is directed against the order(s) dated 30.07.2024 passed by the Principal Judge, Family Court, Kaithal, whereby an application under Section 14 of the Hindu Marriage Act, 1955 (for short the 'Act') for waiving off the mandatory period of one year was dismissed, and consequently the petition under Section 13-B of the Act seeking dissolution of marriage by way of mutual consent, was also disposed of being not maintainable.

2. A perusal of the impugned order shows that marriage of the parties was solemnized on 22.01.2024 at Oliver Suites Peeraghari, New Delhi, according to Hindu

rites and ceremonies. No child was born out of this wedlock. Due to temperamental difference, the parties are unable to live together as husband and wife. They have been living separately since 05.05.2024. Consequently, they filed a joint petition under Section 13-B of the Act, seeking decree of divorce by way of mutual consent. Along with the said petition, they also filed an application under Section 14 of the Act, with a prayer that mandatory period of one year before filing the petition under Section 13-B of the Act, be waived off. However, the Family Court, Kaithal, dismissed the said application, vide impugned order dated 30.07.2024 holding that there was no provision under Section 13-B or Section 14 of the Act, stipulating any situation, under which, statutory period of one year of separation before filing of the petition could be waived off. Consequently, the petition under Section 13-B of the Act was also dismissed being not maintainable.

3. From the perusal of file, it is borne out that marriage between the parties was solemnized on 22.01.2024. The parties have been living separately since 05.05.2024 and that the marriage was never consummated thereafter. Perusal of file further shows that the parties have settled all their claims as to *Istridhan*, maintenance, permanent alimony etc. with their own consent out of Court in every manner, whatsoever, and it was further settled

between them that there shall be no claim of anyone of them over any right, title and interest in the property of each other as well as their parents and neither shall any litigation be filed against each other.

4. Learned counsel for the appellant relies on the judgments in the case of **Mandeep Kaur Bajwa v. Chetanjeet Singh Randhawa**, reported as 2015 (40) RCR (Civil) 198 as well as on **Manpreet Kaur v. Gagandeep Singh** (FAO-3897-2022 (O&M) decided on 15.12.2022) to argue that in the aforesaid cases, considering the marriageable age of the parties as well as the fact that the parties had lived together as husband and wife for about 3-6 months after marriage, their application filed under Section 14 of the Act for waiving off the mandatory period of one year to present the petition under Section 13-B of the Act, before expiry of one year, was allowed. The parties therein were granted a decree of divorce by mutual consent under Section 13-B of the Act.

5. After hearing the arguments advanced by learned counsel for the parties, the sole issue which arises for our consideration is, whether it is a fit case for grant of permission for filing a divorce petition before the lapse of one year of marriage of the parties, in terms of Section 14 of the Act?

6. In order to answer this issue, it would be apt to reproduce Sections 13-B and 14 of the Act which read 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 (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 subsection (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.”

“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.”

Thus, proviso to the Section 14(1) of the Act lays down that in case of exceptional hardship to the appellant or of exceptional depravity on the part of the respondent, 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 marriage. At this stage, we find it relevant to refer to the judgment of a Coordinate Bench of this Court in **Mandeep Kaur Bajwa’s case** (supra), where a similar application under Section 14 of the Act had been dismissed by the Family Court, and the parties were not allowed to present the petition under Section 13-B of the Act, before expiry of one year of the marriage. In that case, the parties had lived together as husband and wife for a period of three months after marriage, whereafter the appellant had moved to Canada. Both the parties therein

were young and keeping in view that they were of marriageable age and had settled all matters and claims between them mutually, waiving off the period of one year was held to be appropriate and the parties were granted a decree of divorce by mutual consent under Section 13-B of the Act.

7. In **Manpreet Kaur's case** (supra), marriage between the parties was solemnized on 13.02.2022. Soon after three months of the marriage, they separated from each other. Considering the factum that both parties therein were of young age and there was settlement of all matters pertaining to permanent alimony (past, present and future maintenance) and that no dispute as to any claims, was left between the parties, their application filed under Section 14 of the Act for waiving off the mandatory period of one year of the marriage to present the petition under Section 13-B of the Act was allowed. Thus, the parties therein were granted a decree of divorce by mutual consent under Section 13-B of the Act.

8. In similar circumstance, in **Mandeep Kaur vs. Rajiv Girdhar**, reported as 2024 (1) PLR 83, this Court was dealing with a case, where the parties were married on 27.03.2023 and they separated on 13.04.2023. They lived together as husband and wife for a very short span after marriage i.e. for about 15 days. It was held that there was

no scope of rehabilitation of matrimonial life between the parties. Ultimately, the appeal was allowed and the impugned order was set aside. The parties were granted permission, 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 the date of marriage

9. Adverting back to the facts of the case in hand, the marriage between the parties was solemnized on 22.01.2024 and they have been residing separately since 05.05.2024. The parties could not adjust due to incompatible behavior, conduct and different temperaments which led to the strained relations between them. Both the parties wish to move ahead and settle in their respective life. Furthermore, all the matters and claims between them are stated to be mutually settled. There is no reasonable probability of reconciliation between the parties.

10. Therefore, in view of the discussion made hereinabove and decisions referred above, we are of the considered opinion that there are sufficient grounds to allow application filed under Section 14 of the Act for waiving off the mandatory period of one year of marriage/separation.

11. As such, the impugned order dated 30.07.2024 is set aside. Consequently, the matter is remanded to the Family Court and 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 Family Court, before the expiry of the period of one year of marriage/separation. The Family Court is directed to expeditiously proceed further with the petition under Section 13-B of the Act in accordance with law.

- 12. Appeal stands allowed, accordingly.
- 13. Pending application(s), if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

17.09.2024
Ajay Prasher

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