

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FAMILY COURT APPEAL (ST) NO. 35536 OF 2023

WITH

**INTERIM APPLICATION (ST) NO. 1520 OF 2024
IN
FAMILY COURT APPEAL (ST) NO. 35536 OF 2023**

Sau. Sarita Vishal Gaikwad @ Monde }
Age – 28 years, Occu. - Housewife, }
R/o. - Post . Ghosale, Tal. Roha, }
District : Raigad. } ... Appellant

Versus

Shri Vishal Vilas Gaikwad }
Age – 30 years, Occu. - Unemployed, }
R/o. C/o. Ashish Vithoba Pawar, }
Om Sai Ashirwad Chawl, }
Sidheshwar Talav, Behind Ram Mandir, }
Hansnagar, Khopat, Thane (W). }
 }
Permanent Resident :- }
A-10/305, Durvankar Building, }
Sarowar Darshan Co-op.HSG. Ltd., }
Chandanwadi, Thane (W) } ... Respondent

Mr. Rajan S. Pawar for the Appellant.

Mr. Sachin R. Pawar for the Respondent.

**CORAM : REVATI MOHITE DERE &
SANDESH D. PATIL, JJ.**

DATE : 10TH OCTOBER, 2025.

ORDER :- (Per Sandesh D. Patil, J.)

1. Rule. Rule is made returnable forthwith with the consent of the parties.

2. The present appeal is filed by the Appellant-wife challenging the Judgment and Order dated 04.07.2022 passed by the Learned Judge, Family Court, Thane, in Petition No. A-409 of 2019. By the impugned order the learned Judge, Family Court has dissolved the marriage solemnized between the parties on 18.12.2018, on the ground of cruelty. The appellant-wife has filed the petition in this Court challenging the impugned Judgment and order dated 18.12.2018.

3. Learned Counsel for the appellant-wife had contended that the marriage between the parties was solemnized on 18.12.2018 at Raigad. It was further contended that divorce proceedings were filed before the learned Judge, Family Court, Thane on 17.09.2019. It was contended that the divorce petition was allowed ex-parte by the Ld. Judge, Family Court on 04.07.2022. One of the main contention of the learned Counsel for the appellant was that, the impugned Judgment and order is bad in law as it falls within the teeth of Section 14 of the Hindu Marriage Act.

4. The learned Counsel appearing for the respondent-husband fairly conceded that the marriage petition was filed within one year from the date of solemnization of the marriage between the parties and as such the proceedings were not maintainable before the learned Judge, Family Court, Thane. He fairly consents to set aside the impugned Judgment and Order and further submits that the learned Judge, Family Court be directed

to decide the matter afresh.

5. We have heard the learned Counsel appearing for the parties. We have perused the provisions of Section 14 of the Hindu Marriage Act. Section 14 of the Hindu Marriage Act reads as under :-

“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, ¹[unless at the date of the presentation of the petition one 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”.

6. In the present case, the marriage between the parties was solemnized on 18.12.2018. The proceedings for divorce were filed on 17.09.2019 in the Family Court, Thane. Thus, the proceedings were filed by respondent-husband before the expiry of one year from the date of solemnization of the marriage. The proceedings which were thus filed before the learned Judge, Family Court, Thane were not maintainable, precisely in teeth of Section 14 of Hindu Marriage Act. In any event the learned Counsel for the respondent-husband has consented for setting aside the impugned Judgment and order.

7. We therefore, pass the following order :-

- I] The impugned Judgment and order dated 04.07.2022 passed by the Ld. Judge, Family Court, Thane in Petition No. A-409 of 2019 is quashed and set aside .
- II] The respondent-husband is at liberty to file fresh petition if he so desires.
- III] In the event such fresh petition is filed, it will be decided by the learned Judge, Family Court, Thane on its own merits without being influenced by previous order or by the present order passed by this Court.
- IV] Appeal is accordingly disposed of.

8. We have made it clear that we have not expressed any opinion on merits, and we keep all contentions of the all the parties on merits open.

9. Rule is made absolute in the aforesaid terms.

10. Since we have disposed of the main appeal, nothing survives in Interim Application, hence, I.A. No. 1520 of 2024 also stands disposed of.

11. All parties to act upon an authenticated copies of this order.

(SANDESH D. PATIL, J.)

(REVATI MOHITE DERE, J.)