

Punjab and Haryana High Court

Before : Justice Ajay Kumar Mittal, Justice Sneh Prashar.

Mandeep Kaur Bajwa - Appellant,

Versus

Chetanjeet Singh Randhawa - Respondent.

FAO-M-301-2014 (O&M)

07.01.2015

Hindu Marriage Act, 1955, S. 13-B , 14 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 - 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 - 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 - 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.

Mr. Nakul Sharma, Advocate for the appellant-wife. Ms. Anju Bansal, Advocate for the respondent-husband.

Ajay Kumar Mittal, J. - This appeal has been preferred by the appellant - wife against the judgment and decree dated 28.5.2014 passed by the trial court, whereby the petition filed by the appellant-wife under section 13-B of the Hindu Marriage Act, 1955 (in short, "the Act") for dissolution of marriage has been dismissed.

2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnized on 29.12.2012 at Village Bullepur, Khanna, District Ludhiana according to Sikh rites and ceremonies. Thereafter, the parties cohabited as husband and wife for about three months at Village Nasrali, Tehsil Amloh, District Fatehgarh Sahib. After three months, the appellant went to Canada. Immediately after the marriage, the parties could not adjust due to having different temperaments which led to allegations and counter allegations against each other. Accordingly, with the intervention of the respectables and elders of the community, the parties decided to dissolve the marriage by mutual consent. It was decided that a sum of Rs. 13,50,000/- shall be payable to the appellant by the respondent as permanent alimony and other expenses. Out of the said amount, Rs. 9 lacs was to be paid in cash or demand draft by the respondent to the appellant at the time of presentation of the petition and

making first statement before the court and the remaining amount of ` 4,50,000/- was required to be paid to the appellant by the respondent at the time of making second statement before the court for passing the decree of dissolution. The petition under Section 13-B was filed on 12.8.2013 i.e. prior to expiry of mandatory period of one year as per provisions of Section 13-B of the Act. It was categorically pleaded therein that the parties are of marriageable age and in case they wait for filing the petition after expiry of one year from the date of marriage, it would cause irreparable loss to them. Alongwith the petition under section 13-B of the Act, the parties also moved application under Section 14 of the Act for grant of leave to file the petition before the expiry of one year from the date of marriage. Learned counsel for the parties submitted before the trial court that period of one year was liable to be condoned in view of the facts and circumstances of the case that the appellant was resident of Canada and it was not possible for her to visit India time and again. Reliance was placed on various judgments of the Apex Court and this Court in that regard. The trial court after hearing the counsel for the parties and perusing the record dismissed the petition vide judgment dated 28.5.2014 impugned herein holding that the mandatory provisions of section 13-B of the Act were not complied with. Hence the present appeal before this Court.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the parties submitted that keeping in view the facts and circumstances of the case and more particularly when the matter has been mutually settled between the parties, the parties are of marriageable age, the appellant is resident of Canada and it is not possible for her to visit India time and again, decree of divorce by mutual consent may be passed by condoning the period of one year from the date of marriage. Reliance was placed on judgments in *Manish Sirohi v. Meenakshi (Smt.)* 2007(5) All LJ 793, *Sankalp Singh v. Prathana Chandra*, 2013(2) HLR 619 (Delhi) and *Gijoosh Gopi v. Sruthi*, 2012(4) KLT 269, to contend that in exceptional hardship or depravity, the period of one year can be condoned in the facts and circumstances of individual case.

5. The question for consideration is whether the benefit of proviso to Section 14(1) of the Act can be availed of to present a petition under Section 13-B of the Act for divorce by mutual consent even though one of the essential ingredients of sub section (1) of section 13B of the Act to present the petition is that the party should be living separately for a period of one year or more. This aspect was considered by various Courts.

6. Section 13-B of the Act reads thus:-

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 solemnised 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 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 solemnised 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.*"

7. Section 14 of the Act provides as under:

"(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 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."

8. On a combined reading of Sections 13-B and 14 of the Act, it is clear that for filing a petition under Section 13B of the Act, a period of one year should elapse from the date of marriage. The proviso to Section 14 (1) is an exception to the necessity for expiration of a period of one year since the date of marriage to enable a party to file a petition for divorce. If an application for leave under the proviso to Section 14(1) of the Act is presented by the parties, what the Court is expected to look into is whether there is exceptional hardship to the petitioner or exceptional depravity on the part of the respondent. If the Court is satisfied about the existence of the ingredients of the proviso to Section 14(1) of the Act, leave would be granted to present the petition for divorce even before the expiry of one year since the date of marriage. Even if leave is granted, but, if it appears to the Court at the hearing that the leave was obtained by misrepresentation or concealment of the nature of the case, the Court has power to impose a condition that the decree shall not have effect until after the expiration of one year from the date of marriage or the Court may even dismiss the petition for divorce without prejudice to any petition which may be brought after the expiration of one year. Once it is made out that there are exceptional circumstances warranting grant of leave to avoid hardship or depravity of the nature mentioned in the proviso to Section 14(1) of the Act, the Court will grant leave to present the petition notwithstanding that one year has not elapsed since the date of the decree.

9. Delhi High Court while delving into identical issue in Sankalp Singh's case (supra) observed as under:-

"12. The cleavage of judicial opinions arises from the interpretation of the interplay of the said Sections of the Act. Pertinently, Section 13B of the said Act was inserted subsequently by Act 68 of 1976 when certain amendments were also simultaneously carried out to Section 14 of the said Act. Thus, one judicial view is that Section 13B is a Code by itself which is different from the grounds of divorce provided under Section 13(1) of the said Act. The philosophy of Section 13 of the said Act is that one of the spouses has to allege and prove the grounds of divorce against the other spouse and should not be taking advantage of his/her own wrong. This is, thus, based on a fault theory. Section 14 restricts presentation of such a petition for divorce within the period of one (1) year from the date of marriage. However, the proviso to sub-section (1) of Section 14 of the said Act allows presentation of a petition even before the end of one (1) year from the date of marriage on the ground that "a case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent". Such exceptional hardship and depravity would, thus, have to be established by the petitioner in order to avail of the proviso to sub-section (1) of Section 14 of the said Act."

10. In the present case, immediately after the marriage, the parties could not adjust due to different temperaments which led to strained relations between them. They lived together as husband and wife for about three months only. Thereafter, the appellant went to Canada. It is not possible for her to visit India time and again. Both the parties are of marriageable age. The matter has been mutually settled between them. In view of proviso to section 14(1) of the Act, condonation of the period of one year in the facts and circumstances of the present case appears to be appropriate. Accordingly, the impugned judgment passed by the trial court is set aside. The appeal stands allowed.

11. The petition under Section 13-B of the Act was filed on 12.8.2013 when the statements of both the parties at first motion were recorded. The statements of both the parties at second motion in terms of Section 13B(2) of the Act were recorded on 17.2.2014. Therefore, in view of the above, the parties are granted a decree of divorce by mutual consent under Section 13B of the Act.