

**IN THE HIGH COURT FOR THE STATE OF TELANGANA:
HYDERABAD**

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CIVIL REVISION PETITION No.517 of 2024

Between:
Dandamudi Phani Krishna

Petitioner No.1

VERSUS

Boyapati Lakshmi Aparna

Petitioner No.2

ORDER PRONOUNCED ON: 22.03.2024

THE HON'BLE SRI JUSTICE P.SAM KOSHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HON'BLE SRI JUSTICE P.SAM KOSHY**
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Dandamudi Phani Krishna

Petitioner No.1

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Boyapati Lakshmi Aparna

Petitioner No.2

! Counsel for Petitioner(s)

: Mr. K.Sunil Chowdary

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> HEAD NOTE:

? Cases referred

- 1) (2017) 8 Supreme Court Cases 746
- 2) 2023 SCC online P&H 4608
- 3) 2020(7) KLR 693
- 4) FAO No. 658/2021 decided on 06. 08.2021
by the Punjab & Haryana High court
- 5) 2021 SCC OnLine All 138

THE HONOURABLE SRI JUSTICE P.SAM KOSHY**CIVIL REVISION PETITION No.517 OF 2024****ORDER:** *(per Hon'ble Sri Justice P.SAM KOSHY)*

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India assailing the order dated 09.12.2023 passed by the Court of the Judge, Principal Family Court-cum-XIII Addl. Metropolitan Sessions Judge, Hyderabad (for short, 'the Court below') in I.A.No.871 of 2023 in OPSR.No.10248 of 2022.

2. Heard Mr. K.Sunil Chowdary, learned counsel for the petitioner.

3. The petitioners have filed a petition under section 13-B of Hindu Marriage Act, 1955 (hereinafter will be referred as 'H.M. Act') seeking divorce on mutual consent along with a petition under Section 14(1) of H.M. Act with a prayer to waive the one year period for filing the divorce petition.

4. As could be seen from the order of the Court below while deciding the above interlocutory application in I.A.No.871 of 2023 and as per the arguments advanced by the learned counsel for the

petitioner herein, the marriage of these petitioners was performed on 01.06.2023. The petitioners continued their marital life for few months and thereafter the difference arose between them due to health problems and impotency. Despite exchanging views, both the petitioners are unwilling to continue their current marital relationship. Therefore, they have filed the present petition under the Section 13-B of the H.M. Act seeking a decree of divorce from this Hon'ble Court through mutual consent. Since the petition is filed within one year, they filed I.A.No.871 of 2023 in O.PSR.No.10248 of 2022 under Section 14(1) of H.M Act and sought for waiver of one year waiting period. The Court below rejected the said request vide order dated 09.12.2023, therefore the revision.

5. The petitioners have claimed that the Court below erred in dismissing their application and failed to understand the hardship faced by the petitioners that is the personal health issues and impotency, which they had explicitly stated. Their petition under Section 14(1) of H.M. Act was dismissed mechanically, without appropriate examination of the content. They have also pleaded that the Court below dismissed their petition without considering their arguments and the precedents they cited, thus exceeding the scope of the matter.

6. Learned counsel for the petitioner has submitted before the Court that the petitioners have been waiting for a divorce for ten (10) months and only two (02) more months are required to fulfil the waiting period for mutual consent under Section 14 of the H.M. Act.

7. The petitioner No.2 is forty (40) years old and who appeared personally through video conferencing submitted that she has received a marriage proposal which is at the final stage of settlement. However, things cannot materialise unless the divorce is obtained so far as the present marriage is concerned. She wishes to remarry due to biological complications that can occur with pregnancies at her age, such as a higher risk of miscarriage and potential complications during delivery. The delay in the divorce process is causing her a great deal of anxiety, as she is keenly aware that time is not on her side which is an immediate resolution to her request for divorce.

8. Learned counsel for the petitioner also relied on the judgment in the case of **Amardeep Singh vs. Harveen Kaur**¹ wherein the Hon'ble Supreme Court was pleased to observe that:

¹(2017) 8 Supreme Court Cases 746

“The statutory period contemplated under Section 13-B(2) of the Act is directory and that it is open to the Court to exercise discretion on the facts and circumstances of each case, where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation”.

9. In the case of **Ramnik Kaur vs. Harvinder Pal Singh**², the Hon’ble High Court in paragraph Nos.8, 9, 10 and 11 held as under:

“8. Thus, proviso to the Section 14 of the Act lays down that in case of exceptional hardship to the appellant or of exceptional depravity on the part of the respondent, if it appears to the Court, the time of one year can be reduced/waived-off. At this stage, we find it relevant to refer to discuss the judgment of a Coordinate Bench of this Court in the case of Mandeep Kaur Bajwa supra where a similar application under Section 14 of the Act had been dismissed by 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 were young and keeping in view that they were of marriageable age and had settled all matters and claims between them mutually, condonation of 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.

9. In a judgment of similar nature by a Coordinate Bench of this Court in Manpreet Kaur supra, marriage between

² 2023 SCC online P&H 4608

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 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 admitted and allowed. Thus, the parties were granted a decree of divorce by mutual consent under Section 13-B of the Act.

10. Coming to the case at present, immediately after the marriage, the parties could not adjust due to different temperaments and ideologies which led to strained relations between them. They stayed together as a couple for 15 days only. Both the parties are young and of marriageable age who wish to move ahead and settle in life. Furthermore, all matters and claims have been already settled by the parties mutually on 10.04.2023. Neither there is any child from the wedlock in question nor there any reasonable probability of a reconciliation between the parties.

11. Therefore, in view of the discussion made herein above and decisions referred above, we are of the considered opinion that this is sufficient ground to allow their application filed under Section 14 of the Act for waiving off the mandatory period of one year.”

10. A Division Bench of Kerala High Court in the case of **Vishnudas H. and another vs. Nil**³ while dealing with a case

³ 2020(7) KLR 693

wherein the facts are more or less similar to the case on hand, made the following observation:

“The parties therein remained together only on their wedding night, thereafter the wife left the house of the husband in the morning of the day-after the marriage. They had no physical relationship and they were not able to arrive at a consensus regarding their future life together. Several attempts of mediation through relatives were made, but the only consensus arrived at was, to dissolve their marital life. They filed a joint application before the jurisdictional Family Court seeking permission to file a petition for divorce and the same was dismissed”.

11. Against the above said backdrop, the Hon’ble Division Bench considered the matter at length and set aside the order of the Family Judge, by making the following observation:

“What is an exceptional hardship to the petitioner and what would be the exceptional depravity for the respondent, are matters which the Court will have to identify, based on the factual situation that arise in each individual case. These two terms cannot be defined or explained in a straight-jacket formula, but will depend upon the circumstances of each case. Allegations that may be sufficient to grant a decree of divorce may not, in all cases, constitute the ‘exceptional hardship’ contemplated under the section. The factors that shall be weighed by the Court while deciding a petition for grant of leave to present a petition for divorce are inter alia, reasonable probability of a reconciliation between the parties, interests of children in the marriage, as is indicated in Section 14(2) of the Act.

With the above factors in mind, the terms exceptional hardship and exceptional depravity ought to be appreciated by the Court by stepping into the shoes of the petitioner or the respondent, as the case may be, in our system of adversarial jurisprudence, when, parties who are discrepant in all aspects, are in accord that continuance of the relationship causes more hardship to them, in the absence of materials to the contrary, Court need not and cannot disbelieve their affirmations, especially at the initial stage of granting permission to present a petition for divorce. The power conferred under the latter part of the proviso to Section 14 of the Act is sufficient safeguard against misrepresentation or concealment in obtaining the above referred permissions.”

12. In the case of **Shivani Yadav vs. Amit Yadav**⁴, it was held as under:

“The application filed by the couple for waiver under Section 14 (1) of H.M. Act was rejected by the trial Court and Hon’ble High Court taking into consideration the facts and circumstances of the case that the couple had stayed together only for two days opined that it is a sufficient ground to allow their application filed under Section 14 of the Act.”

13. In another judgment in **Priyanka Chauhan vs. Principal Judge, Family Court and another**⁵, it was held as under:

⁴ FAO No. 658/2021 decided on 06. 08.2021
by the Punjab & Haryana High court

⁵ 2021 SCC OnLine All 138

“The High Court set aside the order of the trial Court by which the request of the couple was negated considering aspects that the parties within 4 days of solemnizing of their marriage departed, that the marriage has not been consummated and have decided with full conscious that they have to be separated.”

14. The Court below while considering the petition filed by the parties under section 14(1) of H.M.Act, was of the opinion that the period of one year as living separately in Section 13(B) of H.M.Act is a part of the substantive law for seeking divorce by mutual consent and not a procedural formality that can be done away with. It also held that the said condition is not directory but mandatory.

15. In the present case the marriage between the petitioners was solemnized on 01.06.2023 and they commenced their matrimonial life together. However, their marital journey was short-lived as they continued their marital life for two (02) months. During this brief period, their relationship was beset by differences that arose primarily due to health problems and impotency. These issues created a barrier in their relationship and led to the consensual decision of dissolving their marital bond. The primary reason that necessitated the divorce is the couple's incapacity to continue their marital relationship, which has been severely affected by health

problems and impotency. Both parties are unequivocally in agreement about their decision to divorce, and there seems to be no possibility of reconciliation. Their mutual consent for divorce underscores the irreparable breakdown of their marriage. Further adding to the complexity of the situation is the fact that the petitioner No.2, who is forty (40) years old, has received marriage proposals and is keen on remarrying. Her decision is fuelled by the potential biological complications associated with pregnancies at her age. She is acutely aware of the higher risks of miscarriage and potential complications during delivery that can occur with pregnancies at her age. Therefore, she wishes to remarry as soon as possible to mitigate these risks at the earliest. Since they have already completed their ten (10) months waiting period and just about two (02) months time is left to complete the waiting period. Hence, they already waited for the substantial part of the statutory waiting period.

16. In the view of the above circumstances presented in this case and the legal precedents cited, it is apparent that the petitioners are experiencing genuine hardship and also made out an exceptional hardship considering the age at which the respondent is presently poised. Both the parties have today personally appeared before this

Hon'ble Court and requested for waving of the remaining waiting period enabling them to seek dissolution of marriage under mutual consent. The dissolution of their marital bond is beyond dispute, marked by an irreparable breakdown with no conceivable chance for reconciliation. The specific health complications faced by the petitioners, coupled with the urgency expressed by the petitioner No.2, who has the desire to remarry, and also considering her age at this juncture provides a compelling testament to the exceptional hardship they are currently enduring. These elements of hardship are not merely ordinary discomforts of life, but situations of extraordinary burden that will gravely affect the petitioners and their future life.

17. After considering these substantial evidences of exceptional hardship, this Hon'ble Court recognizes the necessity to exercise its discretion judiciously, as stipulated under Section 14 of the H.M. Act. The law provides the Court with the authority to waive the mandatory waiting period of one year in cases of exceptional hardship, which this case unquestionably presents.

18. Therefore, in the view of the above circumstances, this Court is hereby inclined to grant waiver of the mandatory waiting period of

one year. The petitioners can be allowed to file petition for divorce by mutual consent under Section 13-B of the H.M. Act.

19. In the result, the present Civil Revision Petition is allowed. The order of the Court below dated 09.12.2023 is set aside and the petitioners are granted permission to present joint petition for Divorce by waiving the statutory period prescribed under Section 14(1) of H.M. Act.

20. No order as to costs.

21. Consequently, miscellaneous petitions pending if any, shall stand closed.

P.SAM KOSHY, J

Date: 22.03.2024

Note: LR Copy to be marked: Yes
B/O. GSD