

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

CIVIL REVISION PETITION No.379 of 2022

1) Jelekara Chandra Sekhar

2) Lakshmi Pragna @ Bysani
Venkata Naga Pragna

... Petitioners

Versus

Nil

... Respondent

Counsel for the Petitioner : Mr.G.Ramesh Babu

Counsel for Respondent : Nil

ORDER:

The present Revision Petition has been preferred against the Order dated 10.02.2022 passed in I.A.No.20 of 2022 in un-numbered H.M.O.P.No._____ of 2022 on the file of the Court of the Senior Civil Judge, Rajampet, YSR Kadapa District.

2. Heard the learned counsel for the petitioners Mr.G.Ramesh Babu.

3. The petitioners herein jointly filed the above said Original Petition under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as the "**Act**") along with I.A.No.20 of 2022 under Section 14(1) of the Act to waive the one year period for filing the petition under Section 13-B of the Act.

4. In the affidavit filed in support of the said I.A, it was *inter alia* averred that the petitioners' marriage was solemnized on 15.08.2021 and they are living separately from 18.08.2021 onwards. Their marriage was not consummated due to temperaments and ideas, they are unable to mingle with each other and they are living separately according to their wish and will. It is further stated that several mediations were held, but the same proved futile. It is further stated that there is no physical relationship

between them, they arrived at consensus regarding their future life and came to a conclusion to dissolve the marriage and therefore filed the petition for divorce under Section 13-B of the Hindu Marriage Act. It is also averred that since 5 months onwards they were living separately and there is no chance for re-union. While stating that if the marriage is not dissolved, it would cause more stress and trauma, they sought for waiver of statutory period for filing the petition under Section 13-B of the Act.

5. The said application was rejected, aggrieved by which, the present Civil Revision Petition came to be filed.

6. The learned counsel for the petitioners *inter alia* submits that the Order of the learned Trial Judge is unsustainable and amounts to failure to exercise the jurisdiction vested in it. He also submits that the impugned Order is contrary to the scope and spirit of Section 14(1) of the Act. He also submits that the learned Trial Judge ought to have appreciated that the petitioners lived together for 3 days only from the date of their marriage, thereafter they are living separately and there are no chances of re-union and in such other circumstances, the period of one year for divorce by mutual consent ought to have been waived, treating the case is one of exceptional hardship to the petitioners.

7. He further submits that the learned Trial Court failed to appreciate that both the parties have categorically stated the reasons asserting that continuation of marriage would not be possible and erred in dismissing the I.A by placing reliance on the decision of a learned Judge in **Savanam Giridhar Reddy vs. Savanam Pavani**¹, though the same is not applicable to the facts of the present case.

¹ 2022 (1) Lawsuit 86

8. Placing reliance on the decision of the Hon'ble Supreme Court in **Amardeep Singh vs. Harveen Kaur**², the decisions of the High Court of Punjab & Haryana at Chandigarh in **Shivani Yadav vs. Amit Yadav**³ and the Kerala High Court in **Vishnudas H. and Another vs. Nil**⁴, the learned counsel would submit that the Order under Revision is liable to be set aside.

9. Before dealing with the submissions made by the learned counsel for the petitioners and the validity of the Order under Revision, it may be appropriate to extract the provision of Law, relevant to the present context:-

"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 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."

10. The Section thus makes it clear that a restriction is imposed on the Courts from entertaining an application/petition for dissolution of marriage, unless at the date of presentation of the petition, one year has elapsed from the date of the marriage. However, the proviso to the said Section contemplates that a petition can be presented before one year has elapsed

² (2017) 8 Supreme Court Cases 746

³ FAO No.658 of 2021

⁴ 2020 (7) KLR 693

from the date of marriage, on the ground of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent. Therefore, if a case falls in the said two categories, then the period of one year as set out in Section 14(1) of the Act can be waived. What is exceptional hardship has not been defined under the Act and the same has to be considered, on the basis of the attending facts and circumstances in a given case.

11. A Division Bench of Kerala High Court in **Vishnu Das** referred to supra was dealing with a case wherein, the facts are more or less similar to the case on hand. 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 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. Against the above said backdrop, the Hon'ble Division Bench considered the matter at length and set aside the Order of the learned Family Judge. At Para 10 of the Order, the Division Bench held as follows:-

"10. 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 misrepresentations or concealment in obtaining the above referred permissions.”

12. The Division Bench in the facts and circumstances of the case further recorded their conclusions in the following terms:-

“16. A reading of the petition seeking permission in the instant case, as has been narrated earlier, shows that within few hours of the marriage, the petitioners separated from their companionship. It is jointly stated that neither had they lived together as husband and wife nor did they have any physical relationship. All attempts for mediation failed and their relationship has irretrievably broken down. The very fact that they have jointly stated that continuance of their relationship would cause more stress and trauma and that there is absolutely no trace of any stress or trauma in dissolving the marriage, speaks volumes about the exceptions that will be caused to the parties to the marriage, if they are statutorily compelled to wait for a further period of time so as to merely satisfy the legal prescription of expiry of one year from the date of marriage. Both of them have also stated, together, that further delaying the dissolution of marriage has a propensity to cause damage to their career as well as their future prospects of marriage. They have also affirmed that their views are irreconcilable. When, in unison they state that continuance of marriage is more traumatic than dissolution of marriage, and that they lived together as husband and wife only for few hours, it satisfies the test of exceptional hardship contemplated under the proviso to Section 14(1) of the Act, to be granted the benefit of waiver of the period of one year.”

13. **Shivani Yadav’s** case referred to supra is also similar to the facts as arising in the present case. The marriage between the parties therein was solemnized on 15.02.2021, but they separated and started residing separately from 17.02.2021. They applied for decree of divorce by mutual consent under Section 13-B of the Act and moved an application under Section 14 of the Act, with a prayer that the mandatory period of one year before filing the petition under Section 13-B of the Act be condoned. The said application was dismissed by the Family Court. The 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 for waiving of the mandatory period of one year.

14. In another Judgment in **Priyanka Chauhan vs. Principal Judge, Family Court and Another**⁵, the Hon'ble High Court of Allahabad was dealing with an issue as to whether the minimum period of 6 months stipulated under Section 13-B(2) of the Act for motion of passing of decree of divorce on the basis of mutual consent may be relaxed in any exceptional situation. The parties therein filed a divorce petition seeking dissolution of marriage by mutual consent. They moved a joint application under Section 13-B(2) of The Act and the same was dismissed by the learned Family Court. The Hon'ble High Court set aside the said Order considering the aspects that the parties within 4 days of solemnization of their marriage departed, that the marriage has not been consummated and have decided with full conscious that they have to be separated.

15. In the said decision, the High Court had also referred to the Judgment of the Hon'ble Supreme Court in **Amardeep Singh's** case, wherein it was held that waiver of 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.

16. Applying the above stated legal position to the facts of the case on hand, this Court finds merit in the submissions made by the learned counsel for the petitioners. The statement of the petitioners on oath that they are living separately since 3 days after the marriage, that the same was not

⁵ FIRST APPEAL DEFECTIVE No. - 32 of 2021 dated 10.02.2021

consummated and that they had no mental stress in arriving at a conclusion to separate and on the contrary, continuing their relationship causes mental trauma and agony are the factors which weigh to exercise discretion in their favour for waiving the period of one year and the case on hand fall in the category of exceptional hardship as continuance of marriage would be more traumatic than dissolution of the same.

17. Further, the learned Trial Judge instead of examining the specific case of the petitioners herein with reference to the averments made in the affidavit in I.A.No.20 of 2022, based its Order on **Savanam Giridhar Reddy's** case referred to supra arising in a different fact situation and the reasoning in the decisions relied on by the learned counsel aptly applies to the instant case.

18. In view of the conclusions arrived at as above, the Order under Revision is liable to be set aside. Accordingly, the Civil Revision Petition is allowed and the Order dated 10.02.2022 in I.A.No.20 of 2022 in H.M.O.P.No._____ of 2022 on the file of the Court of the Senior Civil Judge, Rajampet, YSR Kadapa District is set aside. The petitioners are granted permission to present joint petition for divorce, by waiving the statutory period of one year prescribed under Section 14(1) of the Act. No order as to costs.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

NINALA JAYASURYA, J

Date: 16.06.2022

Note: Issue CC by one week

(B/o)

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THE HON'BLE SRI JUSTICE NINALA JAYASURYA

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