



2020:KER:26537

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 27TH DAY OF JULY 2020 / 5TH SRAVANA, 1942

OP (FC).No.219 OF 2020

(AGAINST IA NO.113/2020 DATED 25.1.2020 IN UNNUMBERED OP OF
2020 OF FAMILY COURT, PALAKKAD)

PETITIONERS:

- 1 VISHNUDAS H. ,
AGED 23 YEARS, S/O.HARIDAS,
GOPAL NIVAS,
KUNNAMKULANGARA, PIRAYIRI POST,
PALAKKAD DISTRICT.

- 2 GADHA G. ,
AGED 22 YEARS, D/O.GOPINATHAN,
MARAYATH MADATHIL HOUSE,
SOUTH BAZAR, NODUNALKKAL BHAGAVATHY TEMPLE,
KUTTIPPURAM POST,
MALAPPURAM DISTRICT.

BY ADVS.
SRI.M.SASINDRAN
SRI.SATHEESHAN ALAKKADAN

RESPONDENT:

NIL

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
27.07.2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**"C.R."****JUDGMENT**Dated this the 27th day of July, 2020*Bechu Kurian Thomas, J.*

Death of a marriage takes place slowly in most cases. Small bickerings transform into longer squabbles and then turn into unending fights over a period of time and ultimately, end in a court of law as divorce proceedings. In certain rare cases, like the one on hand, death of a marriage takes place overnight. However, law compels them to wait for one year before they can even present a petition for divorce.

2. The parties to the marriage involved in this case, stayed together only on their wedding night. To put an end to the misery of two irreconcilable souls, law governing them, requires a waiting period. Section 14 of the Hindu Marriage Act, 1955 (hereinafter for brevity referred to as "The Act") requires that one year must elapse since the date of marriage, for presenting a petition for divorce. Together, they sought a waiver of the said period of one year. Family Court refused. They seek the



intervention of this Court to come to their aid.

3. The factual narration, as stated in this petition challenging the refusal of the Family Court to grant permission to present the petition for dissolution of marriage even before the lapse of one year, can be described in brief as follows.

4. The marriage was consecrated on 7.11.2019 as per the Hindu religious rites. They remained together only on their wedding night. The 2nd petitioner left the house of the 1st petitioner in the morning of the day after the marriage and thereafter they have been living separately. They had no physical relationship and have not been able to arrive at a consensus regarding their future life together. In spite of several attempts at mediation through relatives, the only consensus that they could arrive at, was to dissolve their marital tie. While seeking leave to institute the divorce petition, after waiving the time period of one year, stipulated under Section 14 of The Act, petitioners state that both parties had no mental stress in arriving at the conclusion to separate and on the contrary, they state that, continuing their relationship causes greater mental trauma and agony.

5. Petitioners jointly filed an application on 11.1.2020 before the Family Court, Palakkad seeking permission to file a



petition for divorce. By order dated 25.1.2020 in I.A. No.113 of 2020 in Unnumbered OP of 2020, the said court dismissed the application stating that from the averments in the petition, it is seen that, the parties have decided to prefer the joint petition for divorce without even living together. The learned Judge further observed that “avoiding the marriage solemnized customarily after one day or one week as if they are removing their coat because of the ego of the parties is not something which is contemplated by the law and it will not augur well to the society also”. According to the learned Judge, the decision to part with is not a matured and well considered one. This original petition is filed challenging the said order.

6. We have heard Sri.M.Sasindran, learned counsel for the petitioners.

7. Section 14(1) of the Hindu Marriage Act, 1955 reads as follows:

“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."

8. A reading of Section 14(1) of The Act, will show that, though the substantial provision provides a restriction in entertaining an application for dissolution of a marriage before the lapse of one year from the date of marriage, the proviso permits the court to grant leave to present the petition before the lapse of one year from the date of marriage, if the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent. The proviso to the section creates two instances where the court can grant leave to excuse time limit i.e., exceptional hardship to the petitioner or exceptional depravity to the respondent.

9. It is common knowledge that none enters into a marriage for the purpose of dissolving it. Certainly, at the time when the marriage vow is taken or the knot is tied, the intention is to



create a permanent bond. However, human nature being a complex one, the error in judgment could be realized instantly or belatedly. When that error in judgment is realized, instantly, as it has happened in the present case, a window is provided by law, through the proviso, against the bar under Section 14(1) of The Act, for persons like the petitioners, to shorten their mental trauma by seeking permission to waive the one year period, of course, on satisfying the conditions stipulated.

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.

11. In this context, it is appropriate to refer to the decision in **Amardeep Singh vs Harveen Kaur (2017) 8 SCC 746**), where the Supreme Court held that the waiver of statutory period, contemplated under section 13B(2) of the Act is directory and that it is open to the court to exercise of discretion on the facts and circumstances of each case.

12. In the decision reported in **Gijoosh Gopi v. Sruthi (2012 (4) KLT 269)**, dealing with an identical case, where the marriage did not last even for a day and there was no consummation, this court came to the conclusion that it would be



impossible for the parties to continue the relationship any further and that there was no chance of any reunion and leave was granted to present the petition for divorce before the lapse of one year.

13. In **Akshara v. Rohin S. Raveendran (2018 (4) KLT 984)**, this Courts held that, *“we are of the considered opinion that the code below had failed to make a proper consideration by conducting an enquiry with respect to presence of the relevant factors mentioned as above. None of the criteria could have fetched a negative inference, if a proper consideration was made in the case at hand. The court below could have considered the factum of the deleterious effect on the continuance of the sterile marriage, on the prospects of remarriage of the parties..... On the facts, in the case mentioned above also, the parties have not lived together and the marriage was not consummated. This court observed that, no purpose of any nature will be served by insisting the parties to wait for one year as required under S.14(1) and that such requirement would cause exceptional hardships to the parties concerned.”*

14. In the decision reported in **Manish Sirohi v Smt. Meenaksh** (AIR 2007 All. 211), while reversing a judgment of the Family Court refusing to entertain a petition for dissolution of a marriage on the ground that one year had not elapsed since the date of marriage, it was held *“it appears to us that when*



immediately after marriage no marital relationship developed amongst themselves and they are voluntarily inclined to withdraw relationship, their life should not be allowed to be deserted. When differences have occurred, which cannot be compromised if at this stage they are separated, they can be able to enjoy their happy marital life elsewhere. Continuance of the litigation will cause mental and physical harassment to them unnecessarily when both of them are not inclined to continue with the relationship at all."

15. In all the above decisions, Courts have granted permission to waive the time period of one year for instituting the petition for divorce based upon the circumstances arising.

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 exceptional hardship 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.

17. A reading of the impugned order of the Family Court indicates that the court was moved more by general principles of morality rather than the specific case of the parties to the marriage. We cannot agree to the reasons stated in the impugned order.

18. In the aforesaid circumstances, we set aside Ext.P3 order dated 25.1.2020 in I.A. No.113 of 2020 in Unnumbered OP of 2020 passed by the Family Court, Palakkad and grant permission to the petitioners to present joint petition for divorce



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by waiving the statutory period of one year prescribed under Section 14(1) of The Act.

The original petition is allowed as above.

Sd/-

**S.V.BHATTI
JUDGE**

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE APPLICATION FILED BY THE PETITIONERS AS I.A.NO.113/2020 BEFORE THE FAMILY COURT, PALAKKAD.
- EXHIBIT P2 TRUE COPY OF THE UN-NUMBERED JOINT APPLICATION FOR DIVORCE FILED UNDER SECTION 13 B OF THE HINDU MARRIAGE ACT FILED BY THE PETITIONERS BEFORE THE FAMILY COURT, PALAKKAD.
- EXHIBIT P3 TRUE COPY OF THE ORDER DATED 25.1.2020 IN I.A.NO.113/2020 IN UN-NUMBERED O.P. OF 2020 ON THE FILES OF FAMILY COURT, PALAKKAD.
- EXHIBIT P4 TRUE COPY OF THE JUDGMENT DATED 4.9.2013 IN O.P.(FC) NO.2651/2013 OF THIS HON'BLE COURT.