

Reserved

Neutral Citation No.2025:AHC-LKO:32543-DB

Reserved on 21.05.2025

Delivered on 29.05.2025

Case :- First Appeal Defective No.115 of 2025

Appellant :-

Respondent :-

Counsel for Appellant :- Maria Fatima, Gaurav Mehrotra, Nadeem Murtaza, Shhreiya Agarawal

Counsel for Respondent :- Prateek Yadav

Hon'ble Vivek Chaudhary, J.

Hon'ble Brij Raj Singh, J.

Order on Delay Condonation Application

1. Heard.

2. Reasons indicated in the affidavit filed in support of the delay condonation application are sufficient.

3. Application is accordingly ***allowed*** and the delay of 17 days in filing the appeal is condoned. The appeal is treated to have been filed in time.

Order on Memo of Appeal

4. This appeal has been filed seeking setting aside the order dated 27.03.2025 passed by the learned Principal Judge, Family Court, Ambedkar Nagar in Misc. Application No.24 of 2025, whereby the application filed by the appellant under Section 14 of the Hindu Marriage Act, 1955 (for short “the Act, 1955”) read with section 151 of Code of Civil Procedure has been rejected.

5. Brief facts of the case, as narrated in the appeal, are that marriage of the appellant with respondent was solemnized on 05.08.2024 as per Hindu Rites and Rituals and a written notarial marriage deed was executed on 12.08.2024 between the appellant and the respondent. On 03.09.2024, both the parties again solemnized their marriage second time as per Hindu Rites and Rituals. Since hostility developed between the appellant and respondent, therefore, appellant

preferred an application through IGRS Portal on 10.09.2024 to the Superintendent of Police, Ambedkar Nagar stating therein that he is under threat for false complaints to be lodged by the respondent. In retaliation, respondent lodged an FIR bearing No.96 of 2024, under Sections 115(2), 352 and 351(3) of Bharatiya Nyaya Sanhita, 2023, Police Station Mahila Thana, District Ambedkar Nagar. Respondent filed an application on 24.09.2024 before the Superintendent of Police, Ambedkar Nagar stating therein that a compromise has been entered into between the parties and she wanted to withdraw the aforesaid FIR lodged on 11.09.2024. Since there was no progress in the marital relations between the parties and an altercation took place between them, respondent on 29.11.2024 again lodged an FIR bearing No.261 of 2024, under Sections 376 and 506 IPC and Section 3/4 POCSO Act, Police Station Hanswar, District Ambedkar Nagar. Thereafter, appellant filed Criminal Misc. Writ Petition No.9400 of 2024 before this Court seeking to quash the FIR. This Court on 12.12.2024 passed an interim order staying the arrest of the appellant and referred the matter to the Mediation and Conciliation Center of this Court. The appellant was also directed to pay Rs.50,000/- to the respondent by 19.12.2024. On 06.12.2024, the learned Civil Judge (Junior Division), Ambedkar Nagar issued summoning order in Criminal Case No.28 of 2024, State Vs. Angad Soni and others, arising out of FIR No.96 of 2024 against the brother and sister-in-law of the appellant.

6. Since the relations between the appellant and the respondent was not cordial and hostility was going on, they filed a petition under Section 13-B along with an application under Section 14 of the Act, 1955. The learned Family Court rejected the said application vide impugned order by recording a finding that since the cause of action for filing a suit for divorce by mutual consent under Section 13-B of the Act, 1955 arises only after the lapse of one year from the date of

separate living, therefore, application under Section 14 of the Act, 1955 cannot be allowed by relaxing the said period.

7. Learned counsel for the appellant has submitted that opening line of Section 13-B of the Act, 1955 begins with the expression “subject to the provisions of this Act” which clearly establishes that provisions of sub-section (1) of Section 13-B of the Act, 1955 are subject to the other provisions contained in the Act, 1955 including one contained under Section 14 of the Act, 1955 and also the proviso appended thereof. For the sake of convenience, Sections 13-B and 14 of the Act, 1955 are quoted below:-

“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 Manager 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.

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.

(2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one yr from the dat 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 aid one year.”

8. Learned counsel for the appellant has further submitted that provision contained in Section 13-B of the Act, 1955 was not a part of the original enactment, but it has been subsequently inserted by Act No.68 of 1976, whereas on the contrary, the statutory provision embodied in Section 14 of the Act, 1955 formed part of the original enactment and has been in operation since the commencement of the Act, 1955. It has been submitted that various High Courts upon being satisfied that where the parties have mutually agreed for dissolution of their marriage, then they should be allowed to present a divorce petition under Section 13-B of the Act, 1955 prior to lapse of period of one year. In this regard, he has relied upon the following judgements of various High Courts:-

- 1. FAO No.756 of 2003, Pooja Gupta and another Vs. NIL, decided on 11.02.2003 (Delhi High Court);*
- 2. Sweety E.M. Vs. Sural Kumar K.B., AIR 2008 Kar 1;*
- 3. Ujwal Shetty Vs. Nil, 2002 SCC OnLine Kar 371;*
- 4. Gijoosh Gopi Vs. Shruti S, 2012 SCC OnLine Ker 31780; and*
- 5. FAO No.658 of 2021, Shivani Yadav Vs. Amit Yadav, decided on 06.08.2021 (Punjab & Haryana High Court).*

9. On the other hand, learned counsel for the respondent has also supported the submissions advanced by the learned counsel for the appellant and has submitted that period of one year may be relaxed because both the parties want to take divorce as soon as possible so that they can live separate life.

10. We have heard Sri Gaurav Mehrotra, learned counsel for the appellant and Sri Prateek Yadav, learned counsel for the respondent.

11. A Division Bench of Punjab and Haryana High Court in the case of **Mandeep Kaur Bajwa Vs. Chetanjeet Singh Randhawa**, 2015 SCC OnLine P&H 452 has considered the issue of Section 13-B read with Section 14 of the Act, 1955 in paragraphs-8 and 10 of the judgement, which are extracted herein-below:-

“8. On a combined reading of Section 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.

...

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.”

12. A Division Bench of Kerala High Court in the case of **Gijoosh Gopi** (supra) has also considered the issue in question in paragraph-5 of the judgement, which reads as under:-

“5. On a combined reading of Sections 13-B and 14 of the Act, it is clear that for filing a petition under Section 138 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 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, 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 of the Act, the Court will grant leave to present the petition notwithstanding that one year has not elapsed since the date of the decrees. In Pooja Gupta v. NII, (2005) DMC 571 and In Sweety EM. v. Sural Kumar K.B.: AIR 2008 Karnataka 1: 2007 ICO 7143, It was held that in exceptional circumstances, the Court could entertain the petition under Section 13B of the Act, even before the expiry of one year, invoking the proviso to Section 14 of the Act.”

13. Similarly, a Division Bench of this Court in the case of ***Manish Sirohi Vs. Smt. Meenakshi***, 2007 SCC OnLine All 513 has also dealt with the present controversy in paragraph-4 of the judgement, which reads as under:-

“4. We have gone through the provision contained under the proviso to Section 14 of the Act and we find that the High Court can allow to present the petition before lapse of one year from the date of 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. 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. Both the parties have withdrawn their allegations and counter allegations against each other.”

14. After going through the factual as well as legal aspect of the matter, it is clear that case of the appellant is also covered with the aforesaid judgements passed by various High Courts. The proviso to Section 14 (1) of the Act, 1955 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. Once an application under Section 14 (1) of the Act, 1955 is filed before the court, certainly the court has to see whether there is exceptional hardship to the petitioner or exceptional depravity on the part of the respondent. In the present case, it is borne out of the record that criminal cases have been filed by the respondent and there is no chance that marriage will subsist. Therefore, the proviso to Section 14(1) of the Act, 1955 is to be invoked, so that the parties may get divorce and lead their peaceful life. Both the parties have mutually filed the divorce petition along with an application under Section 14(1) of the Act, 1955, therefore, the said application is ought to be allowed.

15. In view of the aforesaid discussion, we are of the opinion that when both the parties are voluntarily inclined to withdraw relationship and do not want to continue with the relationship at all and they also want to enjoy their life by parting their ways, therefore, the application filed under Section 14(1) of the Act, 1955 read with Section 151 of Code of Civil Procedure on 26.03.2025 should be allowed treating the case is one of exceptional hardship to the appellant or of exceptional depravity on the part of the respondent as continuance of the litigation will cause mental and physical harassment to them unnecessarily.

16. Accordingly, the impugned order dated 27.03.2025 passed by the learned Principal Judge, Family Court, Ambedkar Nagar in Misc. Application No.24 of 2025 is set aside and the application filed by the appellant under Section 14(1) of the Act, 1955 read with Section 151 of Code of Civil Procedure on 26.03.2025 is allowed. The Family Court shall treat the petition filed under Section 13-B of the

Act, 1955 to have been filed on 26.03.2025 enabling the parties to make a motion under Section 13-B(2) of the Act, 1955 on the expiry of the period of six months from 26.03.2025.

17. Subject to above noted terms, the appeal stands *allowed*.

18. No order as to costs.

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(Brij Raj Singh, J.) (Vivek Chaudhary, J.)

Order Date :- 29th May, 2025

Rao/-