

(2012) 05 CAL CK 0070

Calcutta High Court

Case No: C.O. No. 172 of 2012

Smt. Priyanka Maity (Ghosh)

APPELLANT

Vs

Shri Sabyasachi Maity

RESPONDENT

Date of Decision: May 14, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 14, 15
- Hindu Marriage Act, 1955 - Section 13(i), 13(ia), 14, 14(1), 14(2)

Citation: (2012) 3 CALLT 687 : (2012) 5 CHN 804

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Advocate: K. Chanda, Mr. S. Dasgupta, Ms. S. Das and Mr. D. Bhardwaj, for the Appellant; Somnath Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

Soumen Sen, J.

The order of the trial Judge in allowing the application u/s 14 of the Hindu Marriage Act, 1955 filed by the opposite party is the subject matter of challenge in this revisional application. The opposite party-husband filed a suit for divorce against the petitioner-wife u/s 13(i) and 13(ia) of the Hindu Marriage Act, 1955 on 2nd May. 2011. The order of the Trial Court shows that vide order No. 1 dated 2nd May. 2011 the suit has been registered and 6th July." 2011 was fixed for ascertaining the service of summons. However, no order was passed in relation to the application filed u/s 14 of the Hindu Marriage Act. 1955. On 6th July. 2011 the wife appeared and prayed for time to file written statement and pursuant thereto 9th August. 2011 was fixed for appearance. On 9th August. 2011, the husband filed a firisthi showing service of a copy of petition u/s 14 of the Hindu Marriage Act, 1955 and on the self-same date, the wife filed a petition u/s 24 of the Hindu Marriage Act claiming

alimony pendente lite. The wife also filed a petition u/s 151 of the CPC praying for stay of the suit till the disposal of the petition u/s 14 of the Hindu Marriage Act. Thereafter directions were given for filing objections in relation to the petition u/s 14 of the Hindu Marriage Act. After completion of affidavits, it appears that on 9th August, 2011, the wife filed a petition u/s 151 of the CPC questioning the maintainability of the application u/s 14 of the Hindu Marriage Act, 1955.

2. The application filed u/s 14 of the Hindu Marriage Act and the petition u/s 151 of the CPC questioning the maintainability of the said petition were taken up together and disposed of by the impugned order dated 9th December 2011 by allowing the said petition filed u/s 14 of the Hindu Marriage Act.

3. The principal objection with regard to the maintainability of the application u/s 14 of the Hindu Marriage Act was that such petition was filed before one year has elapsed since the date of the marriage without obtaining prior leave of the Court and in any event the husband has failed to establish any exceptional hardship or exceptional depravity entitling him to file such a divorce petition prior to expiry of the period of one year from the date of marriage.

4. In order to appreciate such objection, it is necessary to narrate some of the relevant facts.

5. The marriage was solemnised on 2nd June, 2010. The husband contended that soon after the marriage trouble started. The wife started misbehaving with the opposite party and relatives of the opposite party and also refused to cohabit with the opposite party during the honey moon. The wife is having hyper thyroid which was not revealed prior to marriage and she is also having illicit relationship and she continued with such relationship. The husband expressed apprehension about his security and claimed that living with her would be dangerous and might cause serious injury and harm. The wife left the matrimonial home after a month of marriage resulting in cruelty upon the opposite party. She misbehaved with the parents of the opposite party. Such acts of cruelty coupled with other facts resulted in a situation where it is not possible and desirable to continue such matrimonial life. Such and other facts have been narrated in detail in paragraphs "4" to "10" of the said application.

6. The suit for divorce and the application u/s 14 of the Hindu Marriage Act were filed on the same date that is on 2nd May, 2011. The said application u/s 14 of the Hindu Marriage Act is short by 30 days since the time of one year would expire on 1st June, 2011.

7. The petitioner contends that the facts narrated in detail in the application u/s 14 of the Hindu Marriage Act brings the case of the petitioner within the exception contemplated in the proviso to section 14 of the said Act. The learned counsel appearing for the petitioner argued that although the suit and the said application u/s 14 of the Hindu Marriage Act, 1955 was filed on the same date, but no order was

passed on the application for leave u/s 14 of the Hindu Marriage Act and for that reason the suit should be dismissed. It is submitted that the said suit was filed prior to expiry of the statutory period and the same is premature and accordingly the Court has no jurisdiction to entertain such an application u/s 14 of the Hindu Marriage Act.

8. In order to appreciate such contention, it is better to refer to section 14 of the Hindu Marriage Act, 1955 which reads as under: -

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 year] from the date 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 [said one year].

9. On a bare reading of section 14 of the Hindu Marriage Act it appears that legislature has consciously given a right to either of the spouses to make an application for divorce before one year has elapsed since the date of marriage if it is established that the case is one of exceptional hardships to the petitioner or exceptional depravity on the part of the opposite party. Even if leave is granted by the Court at the initial stage, the same can be recalled if the other party could show that such leave was obtained by misrepresentation or concealment of the nature of the case. However, if a decree is pronounced on the basis of such leave, the Court may defer the operation of the said decree until after expiry of one year from the date of the marriage or may even dismiss the petition without prejudice and such petition would be filed after expiration of a period of one year upon same or

substantially same facts as those alleged in support of the petition so dismissed.

10. The principal issue is whether the said section 14 is mandatory or directory, particularly where a petition is presented prior to expiry of a period of one year since the date of marriage. Such question has been considered by a Division Bench of our High Court in the case of [Rabindra Nath Mukherjee Vs. ITI Mukherjee @ Chatterjee](#). In the said case a petition for dissolution of marriage was presented a few days before the expiry of one year from the date of the marriage as it happens in the present case. The said provision was held to be directory and not mandatory. Their Lordships after referring to section 14 of the Hindu Marriage and considering the other similar pan materia legislations held that the said provision is directory. The view expressed by Justice A. M. Bhattacharjee with regard to interpretation of section 14 of the Hindu Marriage Act was accepted by Justice Pabitra Kumar Banerjee who delivered a separate judgment. In paragraph "19" of the said judgment Justice Banerjee observed that His Lordship found no reason to take a contrary view in respect of interpretation of section 14(1) of the Hindu Marriage Act, 1955 as given by Justice Bhattacharjee.

11. The relevant observation of Justice Bhattacharjee in this regard is reproduced hereinbelow:

7. But the reasons that are weighing with me for holding these provisions to be directory and thus to require substantial compliance only, and not to be mandatory warranting strict adherence on pain of rejection or dismissal, are as hereunder.

8. The period of three years, as originally enacted by the Legislature, has now been reduced to one year only by the Amendment Act of 1976. That, in my view, clearly indicates that the Legislature itself has been convinced that the period provided for "fair trial" to marriage was unduly long and required circumscription.

9. If the Legislature considered this "fair trial rule" to be of that great importance and of that paramount necessity for the stability of marriage to make it mandatory, it would have inserted similar provisions in the other matrimonial legislations also by way of later amendments. It may be noted that the Legislature has amended rather extensively the Parsi Marriage & Divorce Act. 1936 but without inserting any such analogous provision. If the legislature really intended the provisions to be that mandatory, it would have a fortiori inserted such provisions in the other matrimonial legislations, with Article 14 of the Constitution mandating equal protection of laws and Article 15 interdicting any discrimination on the ground of religion. If Hindu Marriages and Special Marriages warranted protection of "fair trial rule", the Christian or the Parsi marriages can not be discriminated by denial of such protection.

10. The Proviso to section 14(1) would also indicated that the provisions requiring intervention of one year between the date of marriage and the date of presentation for petition for divorce are not that mandatory. The proviso provides for leave to the

parties by the Court to present petition before the expiry of such period on the ground that the case is of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent. But the proviso proceeds to provide that at the trial "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 the expiry of one year from the date of the marriage.....". Now a leave obtained by *suppressio veri* or *suggestio falsi* should be treated as vitiated to the extent of being non est, and the Proviso, therefore, provides that "the Court may dismiss the petition" but without prejudice to any petition which may be brought after the expiry of one year as aforesaid. But since the Court may also decree the petition only with the rider that the decree shall not be operative before one year from the date of the marriage, the petition, though filed before the prohibited period of one year, and that too on misrepresentation or concealment, stands fully legalised and regularized and the prohibition that the decree shall not be effective until one year from the date of marriage may itself become of no practical effect or utility as in contested divorce cases, a decree is seldom available before that period, notwithstanding the directive in section 21B(2) of the Act.

11. A premature petition presented with leave wrongfully obtained is no better, if not worse, than one presented without leave, and if such a tainted petition can nevertheless be decreed, then I am yet to know why premature petition, without any such taint, cannot be similarly decreed. Once the Legislature has been found to have permitted decreeing of a premature petition founded on leave obtained dishonestly, the provision in section 14(1) prohibiting presentation of petition before the prescribed period cannot be held to be that mandatory to warrant rigid compliance, and must be held to be directory to require substantial compliance only. For, to hold otherwise would amount to rule that law favours the dishonest maneuverer and discriminates against the honest errant.

12. Justice Bhattacharyya, (as His Lordship then was) was of the view that the proviso of section 14(1) prohibiting to entertain a petition for divorce before the expiry of one year from the date of marriage is not that mandatory to require compliance with mathematical precision and to warrant rejection for any and every non-compliance. The said judgment was subsequently referred to and considered and followed in *Indumathi v. Krishnamurthy* reported in (1998) 3 MLJ 435. The learned single Judge after considering the decisions of various High Courts and the Hon'ble Supreme Court held as follows:

16. To go back to the decision of the Supreme Court in [Thakur Pratap Singh Vs. Shri Krishna Gupta and Others](#), some rules are so important and fundamental that they go to the root of the matter and must be treated as mandatory and any non-compliance therewith would vitiate everything. Some are not that fundamental

and even though mandatory in form substantial compliance therewith would be good enough. In the absence of the "fair trial" rule in the Indian matrimonial legislation for the Christians, the Parsis, the Muslim women and also in the absence of any such provision even in the Hindu Marriage Act or the Special Marriage Act for matrimonial proceedings for judicial separation and for declaration of nullity, and for the other reasons stated hereinbefore. I have not been able to persuade myself to hold that section 14(1) is that mandatory to warrant rejection or dismissal of the petition presented without rigid and strict compliance thereof. I would rather hold them to be directory to require substantial but no literal, compliance. This aspect was not considered by the Division Bench in *Smritikana v. Dilip Kumar*, AIR 1982 Cal. 247 but there is nothing contrary either to the view I propose to take.

(Italics supplied)

13. The aforesaid decision was followed by another learned Judge of the Calcutta High Court in the decision reported in *Chandrima Guha v. Sumit Guha*. (1994) 2 D.M.C. 6.

14. From the above legal position, it is clear that even without leave, a petition for divorce could be entertained and no separate Order on an application u/s 14(1) granting leave is required. The Proviso to section 14(1) of the Act itself is an answer to the contentions raised by the learned counsel for petitioner.

15. In this case, when this defect was noted, petitioner was cautious enough to file an application itself, and the same is pending before the Family Court. Therefore, there is substantial compliance of section 14(1) of the Hindu Marriage Act.

16. While deciding the question whether the respondent will be entitled to any relief on the petition for divorce, the question of exceptional hardship and exceptional depravity also will have to be considered, and taking into consideration the same, the Court may also give such direction as it may think necessary. If by the time, the Court takes up the case merits, one year time has also expired, I think the Court can take note of the subsequent events also. In a case whether a decree could be granted subject to the condition that it will not take effect until one year after the date of marriage, it is also clear therefrom that a decree on merits also could be passed if the Court takes up the matter for consideration on merits after a period of one year from the date of marriage. The question of dismissing the petition for divorce also will not arise.

13. The Division Bench of the Bombay High Court in the case of *Mr. X. v. Mrs. Y.* reported in (2010) 1 MLJ 696 considered the said section and held that a defect in the nature of leave granted by the court is a mere irregularity which the trial Court may not act upon. The relevant observation of the Hon"ble Division Bench are reproduced below:

6.....

It is obvious from a bare reading of the section that the petition can be presented before the expiry of one year from the date of marriage, by obtaining leave of the Court. In any case, the proviso suggests that a decree obtained within one year on the basis of a defective bone, even one obtained by misrepresentation does not invalidate the decree ipso facto; but the Court has a discretion to order that the decree shall become effective after a year. A defect in the nature of leave granted by the Court is a mere irregularity which the trial Court may not act upon.

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7.....

It is true that section 14 has been enacted with the object of discouraging young spouses from taking recourse to legal proceedings for divorce in a frivolous and irresponsible manner. However, the section provides two exceptions to this rule i.e. where the petitioner faces exceptional hardship or exceptional depravity at the hands of the respondent. It is for the Learned Judge, who hears the application to decide as per the circumstances whether prima facie a case of exceptional hardship or depravity has been made out.

.....

Further, section 14(2) requires that the Court, in such petition, ought to have regard to firstly, the interests of the children, if any, and secondly, of any possibility of reconciliation between the parties before the expiration of one year from the date of marriage. As is apparent, there was no possibility of reconciliation between the parties at any stage after the respondent left the matrimonial house, in view of the cruel treatment meted out to her. We have found that the behaviour of the appellant made cohabitation of the respondent with him impossible and therefore, no reconciliation was possible.....

14. The rules laid down in the said section are intended to give a fair trial to every marriage. Prior to the amendment of 1976, the statutory period for presenting a petition for divorce was at least three years from the date of marriage which however, has now been reduced to one year. The said proviso is intended to modify the effect of one year's limit in very exceptional cases and enables the Court in the exercise of its discretion to grant leave to present such petition before the expiry of one year's limit in a case of "exceptional hardship" to the petitioner or "exceptional depravity" of the respondent. These expressions are identical with the English Statute on marriage and divorce and it may be noted that judicial opinion in England on this question is not uniform. However, it does emerge from the decisions given by the English Courts that the provision is intended to prevent the parties from rushing out of the marriage so soon as they discover that their marriage was not that what they expected. The proviso confers a discretion on the Court and the Court may allow such petition to be presented on preliminary determination of the matter. If the case falls within any one of the above categories, the Court will in the

exercise of its discretion allow the petition to be presented before the expiry of one year period. It is at this stage of granting leave that the Court must consider whether there is any reasonable probability of reconciliation between the parties. It is also incumbent on the Court at this preliminary stage of granting leave to have regard to the interest of children of the marriage as categorically mentioned in sub-section 2. It is needless to mention that such considerations and decisions would be of provisional determinations.

15. The said section does not define exceptional hardship or exceptional depravity. However, the following observations of Denning LJ in *Bowman v. Bowman* can be of some assistance and guidance and it is reproduced hereinbelow:

The answer depends on the use of the word "exceptional". This involves an inquiry into the degree of depravity alleged or the degree of hardship said to be suffered - an inquiry, which it is plain, may prove to be a difficult task.... The only cases in which the question arises are, of course, those of adultery or of cruelty. If there is nothing more than adultery with one person within a marriage that may be considered ordinary depravity. It may not involve exceptional hardship on the innocent spouse. If, however, the adultery is coupled with other matrimonial offences, eg, if a husband not only commits adultery, but also deserts his wife in favour of another woman, or if he is cruel to her, thus causing her not only distress by his adultery but also injury by his violence, then, even if his offence cannot be stigmatised as exceptional depravity on his part, nevertheless, it does not involve exceptional hardship suffered by the wife. Even when adultery is not coupled with desertion or cruelty, it may be committed in such aggravating circumstances as to show exceptional depravity, and, even if the adultery is not coupled with another matrimonial offence, nevertheless, its consequences may involve exceptional hardship to the applicant as, for instance, when a wife as a result of her adultery has a child by another man so that the husband if he took her back would have to maintain another man's child. The husband who commits adultery within a few weeks of marriage, or who commits adultery promiscuously with more than one woman, or with his wife's sister, or with a servant in the house may probably be labeled as exceptionally depraved. Cruelty again, by itself is not exceptional but if it is coupled with aggravating circumstances as for instance drunkenness and neglect or if it is exceptionally brutal or dangerous to health, then, even, if it does not evidence exceptional depravity on the part of the respondent, it does, at least, cause exceptional hardship to the applicant. If it is coupled with perverted lust, it shows exceptional depravity on the part of the proposed respondent. One really important consideration in all these cases is to see whether there is any chance of reconciliation. On this point it is most material to inquire what the applicant has already done to try to make the marriage a success or to become reconciled. If the Court is not satisfied that all that is reasonable has been done in his respect, it may well dismiss the application.

16. In deciding an application for leave, no elaborate enquiry is required. They are not meant to be preliminary trials. In exercising its discretion to grant leave, the Court would take into consideration the petition and objection if any and if the affidavit in answer is destructive of the petitioner's case, the Court can dismiss the application. Even if it may not be destructive but raised some doubts, the Court would be entitled to refuse to exercise such discretion. In exercising such discretion, the Court is required to consider the following two issues:

- (i) the interest of any child of the marriage;
- (ii) the reasonable probability of reconciliation between the parties.

17. In the instant case the wife appeared after service of summons. contested the said proceedings and in fact filed an application for alimony pendente lite. In the averments made in the petition filed u/s 14 of the Hindu Marriage Act. the plaintiff elaborated in detail the reason for filing the said application and the divorce petition. Although the Trial Court did not elaborately discussed the issue of probability of reconciliation on its failure but it is quite apparent from the pleading that the possibility of reconciliation at the stage of filing of the said petition was very remote. It appears that the basis of the suit is cruelty and adultery. It is also a fact that soon after filing of the suit, the wife appeared and contested the proceeding and also filed a petition u/s 24 of the Hindu Marriage Act claiming alimony pendente lite. The grounds made out in the application u/s 14 of the said Act prima facie makes out a case of exceptional hardship in order to attract section 14 of the Hindu Marriage Act. It is needless to mention in considering such an application the possibility of reconciliation is the most important factor but having regard to the averments made in the said petition and from the pleadings, the Court felt that leave should be granted to file the divorce petition prior to the expiry of period of one year. Moreover no child is born out of the marriage. Such exercise of discretion by the Trial Judge does not suffer from any illegality or material irregularity.

18. Accordingly the exercise of such discretion in permitting to file the said divorce petition few days before the expiry of one year does not appear to be perverse and unreasonable.

19. In view thereof, this Court finds no reason to interfere with the order under challenge. The revisional application thus fails and is hereby dismissed. There shall be no order as to costs.