

**IN THE HIGH COURT OF ORISSA AT CUTTACK****MATA No. 370 of 2023*****Debabrata Debadarsan Palei* *Appellant******-versus-******Subhakanti Patra & Another* *Respondents***

Advocate(s) appeared in this case:-

For Appellant : Mr. S.K. Mishra, Sr. Advocate

For Respondent : Mr. H.S. Panda, Advocate

**CORAM: JUSTICE B.P. ROUTRAY
JUSTICE CHITTARANJAN DASH****JUDGMENT
3rd April, 2025****By The Bench.**

1. Heard learned counsel for the Parties.
2. Present Appeal is directed against the impugned judgment dated 26th September, 2023 of learned Judge, Family Court, Bhadrak, wherein the prayer of the husband to grant decree of divorce has been rejected on the ground of non-fulfillment of statutory period prescribed under Section 14 of the Hindu Marriage Act, 1955 (hereinafter referred to as "HMA").
3. The background facts of the case are that the marriage between the Appellant-husband and the Respondent-wife was solemnised on May 13, 2020, following Hindu rites and customs.



The marriage was arranged by their families, and after the solemnisation, the couple began their matrimonial life at the husband's residence. However, within a short span of time, marital discord arose between the parties, leading to serious disputes and allegations from both sides. The situation allegedly deteriorated further when, on June 24, 2020, just over a month after the marriage, the Respondent-wife left the matrimonial home and did not return despite repeated requests by the Appellant and his family. The Appellant claims that all efforts for reconciliation, including interventions by family elders and mediators, failed as the Respondent remained adamant about not resuming cohabitation. Subsequently, on July 7, 2020, the Appellant filed a petition for divorce before the Family Court, Bhadrak, invoking grounds under the HMA. However, this petition was filed within two months of the marriage, raising concerns under Section 14 of the HMA, which mandates that no petition for divorce can be entertained within one year of marriage unless exceptional hardship or depravity is established. Despite this statutory bar, the Family Court proceeded with the matter, and both parties adduced evidence and contested the case on its merits without raising the issue of maintainability.

4. The learned Judge, Family Court, Bhadrak, after examining the pleadings, evidence, and arguments presented by both parties, dismissed the Appellant-husband's petition for divorce. The Family Court found that the Appellant failed to establish sufficient grounds for cruelty or desertion under the HMA. The Court also found that the Appellant failed to make



sincere efforts for reconciliation before seeking divorce, and instead, hastily approached the Court within two months of marriage, which was in clear contravention of Section 14 of the HMA, barring divorce petitions within the first year of marriage unless exceptional hardship is demonstrated. Despite this statutory bar, the Family Court proceeded with the case on merits but ultimately concluded that the Appellant did not establish a valid ground for divorce, leading to the dismissal of the petition.

5. The limited issue before this Court pertains to the procedural lapse under Section 14 of the HMA. Mr. S.K. Mishra, learned Senior Counsel for the Appellant, has submitted that the matter should be remanded to the Family Court for fresh adjudication, considering the procedural defect and the lapse of substantial time.

6. Section 14 of HMA creates a statutory bar on the presentation of a divorce petition within one year of marriage. This provision ensures that matrimonial disputes are not brought prematurely before Courts, allowing spouses a reasonable opportunity to reconcile and prevent hasty dissolutions of marriage. The section reads as –

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 [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].

However, in rare and exceptional circumstances, strict application of Section 14 could lead to undue hardship to a spouse who has genuinely suffered grave cruelty or deprivation within a short period of marriage.

7. The interpretation of Section 14 of HMA is extensively analysed in the recent decision of Hon'ble Allahabad High Court in the matter of *Smt. Alka Saxena Vs. Sri Pankaj Saxena* passed in **FIRST APPEAL No. - 239 of 2015¹** on **24th October, 2024**—

13. Clearly, the bar thus created is not on the entertainment of a petition within one year of the Hindu marriage. Rather, the bar arises on the presentation of a petition within one year of a marriage. Therefore, the statute prevents a party to a Hindu marriage to 'present' any petition to dissolve their

¹ Neutral Citation No. - 2024:AHC:170550-DB



marriage before any competent Court, within one year from the solemnization of their marriage. The upshot of the above discussion is that the bar operates against the cause of action arising to a party to a Hindu marriage within one year from solemnization of their marriage.

14. The exception to the above bar is contained in the proviso to Section 14 of the H.M.A. First that exception may be invoked only upon specific application being filed by a party seeking to dissolve a Hindu Marriage within one year of its solemnization. Second, the bar may be lifted by passing an appropriate order, keeping in mind the statutory safeguards. Thus, it may 'allow' a petition to be presented within one year from the solemnization of a Hindu marriage. That may be done if the case involves 'exceptional hardship' to the petitioner or it involves 'exceptional depravity on the part of the Respondent'. That power once exercised has not been made absolute. The competent Court would retain its jurisdiction to provide that the decree of divorce, if passed, in such a case, may not be given effect until after expiry of one year from the date of the marriage or it may dismiss the petition (after allowing the presentation of such petition in exercise of power under the proviso of Section 14 (1) of the H.M.A), if it later reaches a conclusion that the permission was obtained by the petitioner on misrepresentation or concealment of the nature of the case. Further consideration is to be made by the competent Court while granting permission under the proviso to Section 14 (1) of the H.M.A. in terms of Section 14 (2) of the H.M.A. Thus, the competent Court would also have regard to the interest of children of marriage and reasonable probability of reconciliation.

15. Thus, the presentation of the petition within one year is not permitted under the Act by way of general law. In fact on a wholesome reading of the provision it reveals that cause of action to dissolve a Hindu marriage may not arise to a party thereto, within the first year of marriage, except in cases involving 'extreme hardship' or 'extreme depravity' suffered by the petitioner. Barring those two contingencies, no other exists. Even then, that cause of action is not available on its own. Its existence has to be claimed by the petitioner, by filing a specific application to the Competent Court and it has to be first established before that Court. Only upon that plea being accepted, such



a petition may be entertained. Here, no application was filed or considered or allowed by the learned Court below, before entertaining the divorce petition filed by the Respondent. For that reason, the ratio of the Madras High Court in **Indumati Vs. Krishnamurthy 1998 SCC Online Mad 477** is distinguishable as in that case an application made under the proviso to Section 14 (1) was allowed. In our opinion a divorce petition filed under H.M.A. within one year of marriage cannot be entertained unless the petitioner/s first file an application in terms of the proviso to Section 14 (1) and unless that application is first allowed.

8. The principles laid down in **Alka Saxena (Supra)** provide a legal framework ensuring that Courts do not lightly entertain divorce petitions within one year of marriage. The rationale behind this restriction is twofold –

- i. To protect the sanctity of marriage and ensure spouses make sincere efforts at reconciliation before seeking dissolution.
- ii. To prevent frivolous or premature litigation, which may arise from transient disputes or impulsive decisions.

Section 14 starts with a non-obstante clause, meaning it overrides all other provisions of the HMA. It explicitly prohibits not just the Court from entertaining a divorce petition within one year of marriage but also prevents a party from presenting such a petition. The decision further emphasises that the statutory bar is absolute unless a specific application for leave is filed and allowed. In cases where an application under the proviso is not made, the divorce petition itself is not maintainable. However, the proviso to section 14(1) permits a relaxation of this bar in exceptional cases where the petitioner can demonstrate either



exceptional hardship suffered by the petitioner, or exceptional depravity on the part of the Respondent. The Court retains discretion in such cases to allow the petition to be presented within one year, provided the plea is substantiated through a separate application seeking permission to file for divorce prematurely. Further, even if permission is granted, the Court has the power to withhold the operation of the decree until after one year from the date of marriage, or dismiss the petition if it finds that leave was obtained through misrepresentation or concealment.

9. In the instant case, given that the marriage took place on 13th May 2020 and the divorce petition was filed on 7th July 2020, it is evident that the petition was presented within two months of the marriage, falling squarely within the statutory bar imposed by Section 14 of the Hindu Marriage Act, 1955. The Family Court, in strict adherence to the law, ought to have nipped the proceedings in the bud at the outset, refusing to entertain the petition without a separate application for leave. However, what is striking in the present case is that both parties actively contested the case on merits, led evidence, and participated in the adjudication process without ever raising an objection regarding its maintainability under Section 14. It is further observed that by the time the learned Judge, Family Court, Bhadrak delivered the judgment, more than three years had already elapsed since the solemnisation of marriage. Additionally, it is undeniable that the husband never made any separate prayer for grant of leave under Section 14, nor did the wife raise any challenge on that ground



until the commencement of final arguments. It was only at a belated stage that the issue was raised as an objection, not as a fundamental challenge to the proceedings but merely to highlight a procedural lapse. Furthermore, no specific issue regarding the maintainability of the petition under Section 14 of the HMA was framed by the learned Judge, Family Court, Bhadrak.

10. In light of the above discussion, we find that remanding the matter for fresh adjudication is a more just and equitable approach than dismissing it purely on procedural grounds, particularly, given the peculiar circumstances of the case and the significant passage of time. The parties have been residing separately for nearly five years and have actively contested the case before the learned Judge, Family Court, Bhadrak, by adducing their respective evidence. At this stage, setting aside the proceedings solely on a technicality would serve no meaningful purpose.

11. Therefore, we deem it appropriate to condone the statutory limitation prescribed under Section 14 of the Hindu Marriage Act, 1955, and grant leave in favour of the husband. Consequently, the learned Judge, Family Court, Bhadrak, is directed to adjudicate the matter afresh on merits, ensuring that both parties are given a fair and adequate opportunity to be heard. The parties present before us are directed to appear before the learned Judge, Family Court, Bhadrak, on 21st April 2025, with a certified copy of this order. The learned Judge, Family Court, Bhadrak, shall make every endeavour to dispose of the matter afresh within a period of four months thereafter.



12. It is imperative to clarify that this Court's decision to grant leave and remand the matter for fresh adjudication should not be construed as a general precedent to entertain divorce petitions in violation of Section 14 of the HMA. The statutory mandate under Section 14 serves a crucial purpose in discouraging hasty dissolution of marriages and ensuring due deliberation before seeking divorce. In the present case, the exceptional circumstances specifically, the prolonged separation of the parties and the advanced stage of litigation warranted an equitable approach. This judgment is, therefore, confined strictly to the facts of the present case and should not be misinterpreted as diluting the legislative intent behind Section 14 of the HMA.

13. The Appeal is disposed of with the aforesaid direction and observation.

(B.P. Routray)
Judge

(Chittaranjan Dash)
Judge

A.K.Pradhan/Bijay

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