



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 11<sup>th</sup> December, 2003

+ **FAO 756/2003**

# **POOJA GUPTA & ANR.** ..... Appellants  
! **Through Mr. Prabhat Kiran, Advocate**

versus

\$ **NIL** ..... Respondent  
^ **Through**

Coram:

\* **HON'BLE MR. JUSTICE MUKUL MUDGAL**

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | NO  |
| 2. To be referred to the reporter or not?                                | YES |
| 3. Whether the judgment should be reported in the Digest?                | YES |

**MUKUL MUDGAL J. (ORAL)**

**CM 1518/03(Condonation of delay)**

Allowed subject to all just exceptions. Delay in filing the present appeal stands condoned.

**FAO 756/03**

1. This is an appeal against the order of the Additional District



Judge, Delhi dated 9<sup>th</sup> September, 2003, passed in H.M.A.No.550/2003 by which an application moved by both the parties, i.e., appellant No.1, Pooja Gupta and the appellant No.2, Nikhil Badhwar on 16<sup>th</sup> July, 2003 seeking permission to present the petition under Section 13-B of the Hindu Marriage Act, 1955(in short the 'HMA') for divorce by mutual consent prior to the expiry of one year from the date of marriage of the parties, i.e., 5<sup>th</sup> February, 2003 was rejected.

2. The relevant portion of the proviso to Section 14 of the HMA reads as follows:-

"14 (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.”

3. Both the parties have contended that their plea for exemption from waiting for one year under proviso under Section 14(1) of the Act should have been granted since they have never resided together from the very first day of their marriage and the marriage had not even been consummated. It has further been contended that the parties have realized that they have irreconcilable differences between them and being professionals will suffer mental as well as physical hardship on account of the continuation of their marriage. It has also been submitted that an early divorce by mutual consent in the present circumstances will also enable them to rearrange their lives matrimonially and career-wise. It was also stated that the 1<sup>st</sup> appellant had been offered an alliance from abroad and the 2<sup>nd</sup> appellant an employment offer.

4. On these grounds, the exemption for presenting the petition under Section 13(B) (1) of the Act prior to the one year from the date of the marriage, i.e., 5<sup>th</sup> February, 2003 was sought. The impugned Order dated 9<sup>th</sup> September, 2003 has noted that the exceptional hardship has not been explained by the parties. The impugned judgment has declined the application mainly on the basis that there was a love marriage between



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the parties and it cannot be presumed that the love was lost immediately after the marriage. It was also held that exceptional hardship was not proved and that there could be external influence may be from the parents.

5. In my view, the parties have given sufficient indication of the hardships for seeking exemption for expiry of one year in their petition before the Additional District Judge. Merely because the marriage between the parties was a love marriage, cannot be a ground for not granting permission to the parties to present the petition under Section 13-B of the Act particularly when the appellants were mature professional aged about 28 and 32 years of age respectively and had pleaded exceptional hardship. Furthermore the presumption of external influence is not justified when no reasons are given for arriving at such a conclusion.

6. Mr. Prabhat Kiran, the learned counsel, appearing for the appellants has relied upon the judgment of the Karnataka High Court in Ujwal Shetty & Another Vs Nil reported as II (2002) DMC 556 (DB) wherein the following position of law has been laid down:-

"3. After the parties appeared before the Trial Court at the stage of passing orders, the learned Judge has re-examined the position and he has dismissed the petition on the solitary ground that it was presented prior to the period of one year having elapsed. We are surprised at the



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approach that was adopted because, as pointed out by us earlier, the Family Court had considered the application under Section 14 and had passed the necessary order according to its sanction to present the petition prematurely and it was not open to the learned Judge who was presiding over the very Court at the time when the petition was to be disposed of, to virtually question or sit in appeal or review the earlier order that had been passed by his predecessor who was presiding over the same Court.

4. Though the parties are not present before us, the record indicates that the requisite procedures have been complied with before the Trial Court and but for the aforesaid reason the Trial Court would have granted a decree of dissolution of marriage under Section 13-B. Since some time has passed we have re-ascertained from the parents of the respective parties who inform us that the couple are still desirous of the dissolution of the marriage and secondly that there are not claims of any type subsisting on either side."

7. The relevant portion of the Statement of Objects and Reasons at the 1996 amendment to the proviso to Section 14 in the HMA Act is relevant and reads as follows:-

"Since the passing of the Hindu Marriage Act, various suggestions for amending the same as well as the Special Marriage Act, 1954, were received from some Members of Parliament and the general public. The Special Marriage Act, 1954, being a civil law applicable to all, has necessarily to keep pace with any reform of matrimonial laws. The Law Commission was requested to examine the matter and they have presented the Fifty-ninth Report which contains



their recommendations. The Bill seeks to amend both the Acts aforesaid so as to implement, with necessary modifications, the recommendations contained in that Report. The Committee on Status of Women in India have generally supported the amendments proposed by the Law Commission and suggested, inter alia, the incorporation of a suitable provision for mutual consent in the Hindu Marriage Act more or less on the lines of a provision in that behalf in section 28 of the Special Marriage Act. It is, however, felt that when once the parties have chosen to move the court for divorce by mutual consent, it is not necessary to make them wait for a further period of one year to obtain relief. This period of waiting is, therefore, proposed to be reduced from one year to six months. The Committee has further suggested that having regard to the frequent violations of the provisions of the Child Marriage Restraint Act, it is necessary to provide in the Hindu Marriage Act a suitable provision conferring the right of repudiation on girls who are subject to such marriages, whether the marriage was consummated or not. The right of repudiation is proposed to be conferred on such girls subject to their exercising the same before attaining the age of 18 years. To avoid multiplicity of litigation and consequent delay, it is also proposed to apply the amended law in relation to all pending proceedings under the relevant Acts. Notes on clauses appended to the Bill indicate the changes proposed to the statutes. The objects of the legislation are mainly, (1) to deliberate the provisions relating to divorce; (2) to enable expeditious disposal of proceedings under the Act; and (3) to remove certain anomalies and handicaps that have come to light after the passing of the Acts."

8. The above statement of objects and reasons though made in



the context of parity with Section 28 of Special Marriage Act also clearly indicates that the legislative intent was expeditious disposal of divorces by mutual consent. In my view as long as the Court is satisfied as an essential reason for exemption for filing a divorce by mutual consent prior to expiry of one year after the marriage that the plea for mutual consent is not under coercion/intimidation or undue influence and there are no chances of reconciliation and the parties have fully understood the impact and effect of the divorce by mutual consent, the continuance of such a marriage is bound to cause undue hardship to the spouses. The other relevant considerations which may be considered for granting the exemption from passage of one year before filing a petition for divorce by mutual consent are:-

- (a) the maturity and the comprehension of the spouses;
- (b) absence of coercion/intimidation/undue influence;
- (c) the duration of the marriage sought to be dissolved;
- (d) absence of any possibility of reconciliation;
- (e) lack of frivolity;
- (f) lack of misrepresentation or concealment
- (g) the age of the spouses and the deleterious effect of the continuance of a sterile marriage on the prospects of re-marriage of the parties.



9. I have ascertained the resolve to dissolve the marriage from both the parties as well as from their parents, present in Court even today, who agree and reiterate that it would be appropriate and indeed desirable and essential if the divorce by mutual consent be granted. On my personal examination of two parties, I am satisfied that the decision is not influenced by any external factor including the parents. Both the parties are professionals and are aged about 28 years and 32 years respectively. They both appear to be mature, independent and fully committed even after a passage of about six months from the filing of the petition to part company. Thus even after a passage of about 10 months from the date of the marriage, the parties are firm in their resolve to dissolve the marriage.

10. In this view of the matter the appeal is allowed and the Order dated 9<sup>th</sup> September, 2003 is set aside. The claim for exemption from waiting for one year on the facts of the present case was therefore justified. Accordingly, the permission to file the petition under Section 13(B) of the HMA on 16<sup>th</sup> July, 2003 was justified. In view of the exceptional hardships explained by the parties in the present appeal, the petition under Section 13(B) (1) of the Act which was filed on 16<sup>th</sup> July, 2003 is allowed and the marriage solemnized between the parties, i.e., Puja Gupta and Nikhil Badhwar on 5<sup>th</sup> February, 2003 is dissolved by a decree under Section 13 (B) (1) of the Act with effect from 16<sup>th</sup> January,



2004.

11. The appeal stands allowed and disposed of accordingly.

Office to draw up the decree accordingly.

  
MUKUL MUDGAL, J

DECEMBER 11, 2003  
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