

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI**

TUESDAY, THE 2ND DAY OF APRIL 2013/12TH CHAITHRA 1935

Mat.Appeal.No. 230 of 2013 ()

**AGAINST THE ORDER/JUDGMENT IN OP(HMA)NO.616/2012
OF FAMILY COURT, ALAPPUZHA DATED 19-02-2013**

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APPELLANT(S)/PETITIONERS:

- 1. DEEPAK, AGED 25 YEARS,
S/O.UDAYAN, UDAYA BHAVANAM, MANGALAM MURI,
ARATTUPUZHA VILLAGE, KARTHIKAPPALLY TALUK, ALAPPUZHA.**
- 2. ASWATHY,AGED 19 YEARS,
D/O.SUDHAYAMMA, ASWATHY BHAVANAM,
THAMALLACKAL NORTH MURI, KARTHIKAPPALLY TALUK,
ALAPPUZHA.**

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENT(S)/RESPONDENT:

NIL

**THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION
ON 02-04-2013, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Kss

T.R. RAMACHANDRAN NAIR & A.V.RAMAKRISHNA PILLAI, JJ.

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Mat. Appeal No.230/2013

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Dated this the 2nd day of April, 2013

J U D G M E N T

Ramachandran Nair, J.

The appellants are respectively husband and wife. They are aggrieved by the Judgment rendered by the Family Court, Alappuzha in O.P.(HMA) No.616/2012 filed by them under Section 13B of the Hindu Marriage Act, 1955 (for short, 'the Act'). The court was of the view that the jurisdiction vested with the court under Section 13B of the Act cannot be exercised as the petitioners have not been living separately for a period of one year immediately preceding the presentation of the petition.

2. We heard the learned counsel appearing for the appellants.

3. The marriage of the appellants was solemnised on 13/05/2011 and they have been living separately since 30/06/2011. They have thus resided together in the house of the first appellant till 30/06/2011. It is pointed out that the marital relationship has broken down irretrievably. It is also pointed out in para.3 that the petition O.P.(HMA) No.616/2012 was presented on 16/05/2012 and on the expiry of the period prescribed under Section 13B(2) of the Act, the parties appeared on 30/11/2012 before the court below.

4. The learned counsel for the petitioners relied upon the Judgment of a Division Bench of this Court in ***Gijoosh Gopi v. Sruthi*** [2012 (4) KLT 269] wherein this Court was of the view that the proviso to Section 14 of the Act will grant power to the court to entertain the application, in exceptional circumstances. Para.6 of the Judgment reads as follows:

“6. On a combined reading of Ss.13B and 14 of the Act, it is clear that for filing a petition under S.13B of the Act, a period of one year should elapse from the date of marriage. The proviso to S.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 S.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 S.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 S.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 decree.”

5. Thus Section 13B is subject to S.14 of the Act. Hence the power under the proviso to S.14 is available. Appellants have pointed out that there was lack of mutual co-ordination and during the matrimonial life there was not a single instance of love and affection between the parties. It is clear that the case is one of exceptional hardship to them. It would be impossible for them to continue together. Hence the proviso to S.14 can be safely invoked here and we do so. Here the petition was presented after the expiry of one year from the date of marriage. Accordingly, we allow the appeal and the Judgment in O.P.(HMA) No.616/2012 is set aside. A decree is granted dissolving the marriage between the appellants on mutual consent, namely, under Section 13B of the Act. O.P.(HMA) No.616/2012 before the Family Court, Alappuzha stands allowed.

Sd/-

(T.R. Ramachandran Nair, Judge.)

Sd/-

(A.V. Ramakrishna Pillai, Judge.)