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

Judgment reserved on: 13.01.2022

% **Judgment delivered on:18.04.2022**

\+ **MAT.APP. (F.C.) 110/2021 &CM APPL. 41458/2021**

RISHU AGGARWAL ..... Appellant

Through: Mr. Rajesh Aggarwal, Mr.Mridul Aggarwal & Ms. Deeksha Aggarwal, Advocates (both for appellant as well as respondent).

Versus

MOHIT GOYAL ..... Respondent

Through: Mr. Rajesh Aggarwal, Mr.Mridul Aggarwal & Ms. Deeksha Aggarwal, Advocates (both for appellant as well as respondent).
Mr. Preetesh Kapur, Amicus Curiae.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T O F T H E C O U R T

History/ Brief Facts:

1. The appellant/ petitioner no. 1/ wife has preferred the present appeal under Section 19 of Family Courts Act, 1984 to quash and set aside the judgment dated 16.10.2021, passed by learned Principal Judge, Family Court, North District, Rohini Courts, Delhi in HMA No. 1187 of 2021 titled as ***Rishu Aggarwal and Mohit Goyal***. The Family Court dismissed the divorce petition by the impugned judgment, which was preferred by the appellant/ petitioner no. 1/ wife and respondent/ petitioner no. 2/ husband

under Section 13B of HMA 1955 (hereinafter referred to as 'the Act') for dissolution of marriage by a decree of divorce by mutual consent. The Family Court dismissed the application under Section 14 of the Act and, consequently, the petition as well, as it was filed before the expiry of one year from the date of marriage.

2. The marriage between the appellant and the respondent was solemnized on 04.04.2021 as per the Hindu rites and ceremonies at Ram Nagar, Uttarakhand. The appellant, after marriage, shifted to the matrimonial home of the respondent at Faridabad, Haryana.

3. Soon after the marriage, marital differences cropped up between the parties, and from 14.04.2021 onwards, they started living separately albeit in the same house. On 29.07.2021, the appellant left her matrimonial home and went to her parental house at Rohini, Delhi. The appellant and respondent hardly lived together as husband and wife, and no child has been born out of the wedlock.

4. Notably, it is stated that the parties decided to live separately due to temperamental differences. Their parents, relatives and friends made sincere efforts to save their marriage and to reconcile the matter. However, all the efforts were in vain and the parties could not settle their matrimonial differences. Seeing no possibility of reconciliation, the appellant and the respondent decided to seek dissolution of their marriage. Accordingly, they executed an MOU dated 16.09.2021, settling their disputes and undertaking to co-operate with each other to dissolve their marriage by mutual consent as per the provisions of the Hindu Marriage Act, 1955. The parties have no claims against each other, and there is no pending litigation between them.

5. Thereafter, both parties returned/ exchanged the articles that were

given to each other at the time of marriage. The belongings, *stridhan*, etc., of the appellant have also been returned by the respondent, and nothing is left to be returned.

6. Accordingly, in pursuance of the aforementioned MOU, a joint petition under Section 13B (1) of the Act for dissolution of marriage by mutual consent was filed by both the parties, incorporating the terms of settlement arrived between the parties, as contained in the MOU.

7. The parties filed the petition under Section 13B (1) along with an application under the proviso to Section 14 of the Act, for leave to present the petition before the expiry of the cooling-off period of one year from the date of marriage.

8. In the said application, the appellants sought to satisfy the requirements of the proviso to Section 14, by stating that there was denial of sex from both sides which led to a situation of "exceptional hardship"/ "exceptional depravity". For clarity, the reasons, as stated in the application, are reproduced as under:

> *"11. The petitioners submit that their marriage could not be consummated and within few days of the marriage the parties were living separately, initially in separate rooms of the matrimonial house, due to their vast temperamental differences since 14.04.2021, and* ***there was denial of sex from both sides,which fact itself is an exceptional hardship/depravity on the part of the petitioners to each other, making it a fit case to be dealt with under the present application.***
>
> *In an identical situation, the Kerala High Court has dealt with the issue in "2019 SCC Online KER 14813, titled as 'Ratheesh M. vs Dhanya K. V' as under:*

'... 3. Admittedly, the aforesaid original petition was filed mainly on the ground that there is a denial of sex from the part of the petitioner herein and it would amount to cruelty falling under section 13(1)(ia) of the Hindu Marriage Act. After considering the seriousness and urgency of the grounds, the Family Court granted special leave for preferring the original petition before the expiry of one year period on finding that the alleged conduct from the part of the petitioner would cause exceptional hardship to the petitioner. The special leave is a matter falling within the discretionary power of the court. We are also of the view that denial of sex is a conduct, which would cause exceptional hardship to the other spouse. Therefore, the Family Court is justified in granting special leave to prefer the original petition before the expiry of one year.

4. We do not find any reason to interfere with the impugned order. Hence, this original petition will stand dismissed.'

12. That the parties have fully understood the impact and effect of the divorce by mutual consent. The parties are not inclined to interact further with each other; and there is no possibility of parties resuming cohabitation. Continuance of such a marriage is bound to cause undue hardship to each other. No further claim of any type is subsisting on either side. The parties have mutually settled their differences and there is no grievance or dues against each other.

The divorce petition on mutual consent; and the application under section 14 are not frivolous; and there is no mis-representation or any concealment.

It is a fit case for the exercise of power under the proviso of Section 14 of [HMA, 1955, and that the waiting period will only prolong the agony of the parties.

The applicants further rely upon

(i) *"AIR 2017 SC 4417, Amardeep Singh versus Harveen Kaur ' – Section 13 B (2) is not mandatory but directory.*

(ii) *'Shivani Yadav versus Amit Yadav, FAO No. 658/2021 decided on 06. 08.2021 by P&H High court - wherein marriage was solemnized on 15.02.2021. Just after 2 days i.e. on 17.02.2021 the parties separated and filed mutual divorce petition on 20.05.2021. The Hon'ble P&H High court set aside the Family court order refusing to allow the application under section 14 of HMA.*

That even otherwise, both the parties are of young age and have a bright future ahead with every possibility of good prospective matches to settle in their respective lives and family affairs; and it would be futile to delay the present petition for mutual divorce." (emphasis supplied)

FAMILY COURT'S OPINION:

9. The Family Court refused to grant the aforesaid leave as it was of the opinion that the exceptions carved out in the proviso to Section 14 of the Act were not made out, and the parties were unable to prove a case of exceptional hardship or exceptional depravity. Consequently, the petition of the parties was dismissed, as it was filed before the expiry of one year period. The Family Court held thus:-

"As per provision of Section 14(1) of Hindu Marriage Act, a petition for dissolution of marriage cannot be filed before expiry of one year from the date of marriage. The proviso to section 14 (1) HMA lays down that the court may on application made to it, allow a petition (for dissolution of marriage) to be presented before expiry 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 is necessary to mention at the very outset that it is clear from the language of the provisions of section 14 HMA and it is also well settled that the leave to file a petition for dissolution of marriage before expiry of one year from the date of marriage contemplated under the proviso to section 14 (1) of HMA is an exception and not a rule. The period of at least one year has been prescribed for filing of a petition for dissolution of marriage by the law makers with certain objectives and the proviso to section 14 (1) HMA should be invoked with utmost caution.

If the facts of the present case are analyzed in light of the provisions of section 14 of HMA and relevant case law, I am of the considered view that the present case is not one of exceptional nature as required under the provision of section 14 (1) of HMA. Though the parties are claiming that they have lived together only from 04.04.2021 to 14.04.2021 but as per their own case, they have lived in the same house/ matrimonial home for around four months. There is no material except the bare claim of the parties that they were living separately in the same house from 14.04.2021 to 29.07.2021. The period of around four months is a substantive period. The judgments in case of Ratheesh M. (Supra) and Shivani Yadav (Supra) relied upon by Id. Counsel for petitioners are not helpful to the petitioners being distinguishable on facts.

10. As regards the applicability of the proviso to Section 14 to a motion of divorce by mutual consent under Section 13B, the judgment noted that:

So far as judgment of Hon'ble Supreme Court in Amardeep's case (Supra) is concerned, the Hon'ble Supreme Court has dealt with another aspect of the case regarding the statutory period for filing of petition for divorce by way of mutual consent u/sec. 13-B of HMA. Though, in the said case, the Hon'ble Apex court was mainly dealing with the statutory period of six months u/sec. 13-B(2) HMA, but the Hon'ble

Supreme Court has no where permitted the court or the parties to waive the statutory period of one year as provided u/sec. 13-B (1) of HMA. The Hon'ble Court has observed that the court dealing with the matter should be satisfied that a case is made out to waive out the statutory period of six months u/sec. 13-B (2) HMA and should also be satisfied that the statutory period of one year as prescribed under section 13-B(1) HMA is already over that the Hon'ble Supreme Court is of firm opinion that period of one year as provided u/sec. 13-B (1) HMA should be over before the presentation of divorce petition on mutual consent and has no where observed that the said period of one year is directory in nature and not mandatory. So this judgment does not support the case of the present petitioners/applicants.

In view of above facts and circumstances, the application u/sec. 14 of HMA filed by the petitioners is found to be devoid of merits and the same is accordingly dismissed."

11. The issues which require adjudication in this case are as follows:

(i) Whether the proviso to Section 14 applies to Section 13B (1), thereby permitting the waiver of mandatory one year separation period envisaged in Section 13B?

(ii) If yes, whether the denial of conjugal relationship tantamounts to 'exceptional depravity' or 'exceptional hardship' as contemplated under the proviso to Section 14 of the Hindu Marriage Act, 1955?

12. Since there was no contest in the appeal, we, vide our order dated 23.11.2021, appointed Mr. Preetesh Kapur, Sr. Advocate as *Amicus Curiae* to assist us in the present case.

Appellant's Contentions:

13. Learned counsel for the appellant submits that since the parties had entered into the settlement voluntarily, and have undertaken to abide by the

terms and conditions of the settlement, out of their own sweet will, their plea to waive off the period of one year of separation before filing the first motion petition on the grounds of exceptional hardship should have been considered liberally.

14. He further submits that the parties in the present case are young and of marriageable age, having a bright future ahead. The parties have no claims against each other and have already settled all their disputes. They can settle in their lives and look forward to their future. Thus, any delay in dissolving the marriage will only create further hardship to the parties and avoidable wastage of precious time. It is added that there is no possibility of the appellant and respondent resuming cohabitation, as there has been denial of conjugal relations from both sides.

15. The learned counsel placed reliance on judgment of Division Bench of Punjab & Haryana High Court in ***Shivani Yadav v. Amit Yadav***, FAO No. 658/2021 dated 06.08.2021, wherein the Division Bench while dealing with a similar case observed as follows:

> *"In the facts of the present case, marriage between the parties was solemnized on 15.02.2021. Soon after the marriage, they separated from each other. At the time of marriage, appellant-Shivani Yadav was 23 ½ years of age and was student M.Sc. Respondent-Amit Yadav was 23 ½ years of age. Both are young persons. They are residing separately since 17.02.2021. Moreover, as per the details given in their petition under Section 13-B of the Act (Annexure A-1), both the parties have already received all the articles given by them at the time of marriage. It has been further stated that none of them will claim anything with regard to the past or future maintenance.* ***Since, the couple had stayed together only for two days, this is the sufficient ground to allow their application filed under***

> ***Section 14 of the Act for waiving off the mandatory period of one year.*** *Moreover, as per petition filed under Section 13-B of the Hindu Marriage Act (Annexure A-1), the mutual agreement has been duly complied with by the parties."*(emphasis supplied)

16. Learned counsel for the appellant further submitted that when the parties have separated within a few days of marriage, and have mutually decided to end the marital relationship, then not granting divorce due to non-fulfilment of the minimum requirement of one year would tantamount to exceptional hardship, not only to one, but both the parties. It is urged that such a case stands on a different footing than a case of divorce by one partner on the ground of cruelty meted out by the other. For instance, if one of the parties denies conjugal relationship to the other, while the aggrieved party is desirous of maintaining the conjugal relationship, it would tantamount to cruelty.

17. Reliance has also been placed on ***Ratheesh M. v. Dhanya K. V.***, 2019 SCC Online Ker 14813, where the petition was filed before the expiry of one year period, on grounds of denial of sex. The Family Court accepted the said plea and waived the statutory period of separation. The High Court refused to interfere with the said order, while observing as follows:

> *"…3. Admittedly,* ***the aforesaid original petition was filed mainly on the ground that there is a denial of sex from the part of the petitioner herein and it would amount to cruelty falling under section 13(1)(ia) of the Hindu Marriage Act. After considering the seriousness and urgency of the grounds, the Family Court granted special leave for preferring the original petition before the expiry of one year period on finding that the alleged conduct from the part of the petitioner would cause exceptional hardship to the petitioner. The special leave is a matter falling within***

the discretionary power of the court. We are also of the view that denial of sex is a conduct, which would cause exceptional hardship to the other spouse. Therefore, the Family Court is justified in granting special leave to prefer the original petition before the expiry of one year.

4. We do not find any reason to interfere with the impugned order. Hence, this original petition will stand dismissed."(emphasis supplied)

18. To buttress the submissions advanced above, learned counsel for the appellant further submitted that forcing the parties to remain tied with the matrimonial bond is, in itself, a cause for exceptional hardship. When the parties are not happy and have different mental orientations, it would lead to exceptional hardship and exceptional depravity to the parties to, *per force*, keep them tied in a relationship. He submitted that denial of a conjugal relationship by both parties is in itself exceptional depravity.

Submissions by the Learned Amicus Curiae

19. The Learned Amicus Curiae has submitted that the proviso to Section 14 of the Act focuses on the expression *"**exceptional hardship"*** and ***"exceptional depravity"***, which is distinct from cruelty – a distinct ground for claiming divorce under the Act. He further submitted that the denial of conjugal relationship cannot tantamount to exceptional depravity or exceptional hardship.

20. Section 13B of the Act provides a distinct embargo, which is, that the parties filing for dissolution of marriage by mutual consent under Section 13B must have been living separately for a period of one year, or more. It contains a well defined substantive pre-requisite for invoking the route of divorce by mutual consent. In exercise of the power under the proviso to

Section 14 of the Act, this pre-requisite/ embargo, itself, cannot be waived off.

21. Learned Amicus submitted that there are various provisions in the Act, which specifically contemplate divorce on grounds of – denial/lack of consummation, or lack of conjugal relationship. If the Act specifically contemplates these as grounds for divorce, it cannot be interpreted that such a denial would also be a case of exceptional depravity or exceptional hardship.

22. Mr. Kapur further submitted that the Hindu Marriage Act serves not only the purpose of granting statutory meaning to a Hindu marriage, but also prescribes the legal means of separation. It also serves the societal purpose of protecting and preserving the institution of a Hindu marriage, which is a sacrament, and not an ordinary arrangement or agreement/ contract. While interpreting any section, it is relevant that the purpose behind it is kept in mind. Section 14 seeks to give a Hindu marriage some reasonable time to work– with the object of preserving the institution of marriage. The proviso must also be interpreted in the light of that legislative intent. If that be so, the phrase '*exceptional depravity or exceptional hardship'* has to be interpreted not only from the individual's point of view, but also from a larger perspective. It is to be viewed from the prism: whether the society views the denial of conjugal relationship for a year as a circumstance of exceptional depravity, or exceptional hardship.

23. Mr. Kapur submits that the words '*exceptional hardship or exceptional depravity*' occur together, so they have to be understood *ejusdem generis*. Learned Amicus submitted that the Law Commission of India in it's fifty-ninth report published in March 1974, which was the basis

of the enactment of *Act 68 of 1976*, discussed the specific grounds for obtaining divorce under the Hindu Marriage Act; the general approach, and; the amendments required. Relevant paragraphs of the said report are reproduced as follows:

> *"7.17 Section 13 and wilful refusal to consummate the marriage.*
>
> *We now consider a suggestion made to us, to add a ground of divorce. There is, at present,no separate provision for relief under the Hindu Marriage Act, where either party willfully refuses to consummate the marriage. In some circumstances, such conduct may amount to cruelty, but the suggestion was that the nature of the behaviour is such that it should be made a separate ground for divorce. Under the Special Marriage Act, willful refusal by the respondent to consummate the marriage is a ground which renders the marriage voidable. This was the law, and is the law, in England also. But, on principle, it was stated, this is an incorrect approach. In general,a marriage is regarded as void or voidable by reason of some circumstances existing at the time of the marriage. This is obvious from a study of the various grounds which render the marriage voidable or void.*
>
> *7.22. The suggestion before this Commission was that the following should be added as a ground of divorce in section 13 of the Hindu Marriage Act:-*
>
> > *"that the marriage has not been consummated owing to the willful refusal of the respondent to consummate it"*
> >
> > *Of course, "willful refusal"connotes a settled and definite decision, come to without just excuse".*
>
> *7.23. We are, however, of the opinion that this need not be a specific ground for divorce. Where such conduct amounts to cruelty, it can be dealt with under that head."*

24. The learned Amicus submitted that the Act itself envisages, and

specifically contemplates, divorce on the ground of non-consummation or denial of conjugal relationship, and leaves the safeguard of one year. Thus, it cannot be said that the denial of conjugal relationship was intended by the Parliament to fall within the purview of the phrase '*exceptional hardship or exceptional depravity.*'

25. We have considered the submissions advanced by learned counsel for the appellant, and the submission of the learned Amicus.

ANALYSIS OF THIS COURT:

26. Before embarking upon the specific issue regarding the denial of conjugal relationship and its effect on marriage, it is pertinent to address the first issue regarding the correct legal position on the applicability of the proviso to Section 14 to a divorce sought under Section 13B of the Act.

27. The question has been a subject of consideration in a range of judicial opinions. In order to understand the controversy herein, we may set out Section 13B and Section 14 of the Act, the interpretation whereof requires our consideration. Section 13B reads thus:

> ***"13B. 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 solemnized before or after the commencement of the Marriage 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 solemnized 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." (emphasis supplied)

28. Section 13B(1) provides the option of a divorce based on mutual consent of the parties subject to the fulfilment of three conditions/grounds:

First, the parties have been living separately for a period of one year or more;

Second, they have not been able to live together;

Third, they have mutually agreed that the marriage should be dissolved.

The *first* condition specifies the period to be elapsed before filing of the petition (or the first motion). It may be noted that Section 13B(2) provides for another period of 6 months which must elapse before proceeding with the second motion i.e. after filing of the petition. However, the period mentioned in sub-section (2) is not a subject matter of dispute in the present case. Here, the controversy is regarding the period of one year specified in sub-section (1). The appellant sought the waiver of this period by resorting to the proviso to Section 14 of the Act.

Section 14 reads as follows:

"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, [1][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 [1][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 [2][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 [3][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." (emphasis supplied)

Section 14 lays down a general rule that no petition for divorce must be entertained by the court before a period of one year from the date of marriage. The proviso to Section 14 provides for circumstances wherein the aforesaid condition can be relaxed, if it is proved that:

First, there is exceptional hardship on the petitioner, or;

Second, there is exceptional depravity on the part of the respondent.

On a facial view of the aforesaid conditions, a contradiction seems to arise on the applicability of the waiver Clause contained in the proviso to Section 14(1) in respect of the period of minimum separation envisaged under Section 13B(1). In other words: is it permissible for the parties to approach the court for seeking a decree of divorce by mutual consent, before

exhausting the minimum one year period of separation on the ground that the case involves "exceptional hardship" or "exceptional depravity"? Had there been no requirement of minimum period in case of Section 13B(1), the proviso to Section 14 would have operated without controversy. However, the prescription of statutory minimum period of separation of one year in Section 13B(1) on the one hand, and the waiver Clause in the proviso to Section 14(1) on the other hand, needs deeper consideration.

29. Reliance was placed upon ***Amardeep Singh v. Harveen Kaur*** (2017) 8 SCC 746 to contend that the period under Section 13B(1) is merely directory, and not mandatory. We hasten to note that the question before the Court in that case was whether the waiting period prescribed under Section 13B(2) is mandatory or directory. The Supreme Court, *inter alia*, observed :

> *19. Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:*
>
> > *(i)* ***the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself****;*
> >
> > *(ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;*
> >
> > *(iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;*
> >
> > *(iv) the waiting period will only prolong their agony.*

> *The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.*
>
> *20. Since we are of the view that the period mentioned in Section 13-B(2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."* (emphasis supplied)

30. It is clear that the present controversy was not a part of the subject matter in ***Amardeep Singh*** (Supra). However, while answering the issue regarding the period specified in Section 13B(2), the court proceeds on the premise that the period of one year specified in Section 13B(1) would be over. Thus, this judgment may not help the case of the appellant, as it cannot be said to dwell into the issue arising in the present controversy.

31. In ***Miten v. UOI***, (2008) 5 Mah.L.J. 27, the Division Bench of the Bombay High Court expressed a view on the mandatory/directory nature of the timelines specified in Section 13B. It held that Section 13B is clear and not ambiguous. The same is mandatory, and cannot be treated as procedural. Thus, it cannot be moulded by the Court in exercise of its judicial discretion. The paragraph relevant for discussion reads as follows:

> *"13.1. Provisions of section 13B of the Act are mandatory and the condition precedent to the presentation of the petition set out therein had to be satisfied strictly. Further, section 14 of the Act prior to 1976 amendment had put a further bar stating that notwithstanding anything contained in the Act, the Courts shall not be competent to entertain any petition for dissolution of marriage by a decree of divorce unless the petition had been presented after a lapse of three years since the date of*

marriage. However, proviso to section 14(1) provided an exception to the effect that a petition could be presented even before the expiry of the said period of three years if circumstances of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent existed and in such cases the Courts may, after hearing, pronounce a decree subject to the condition that the decree shall not have effect until after the expiry of three years. In this backdrop and while amending the Act in the year 1976, the Legislature while keeping the three of its aforementioned objects in mind, reduced the period from three years to one year and maintained the language of section 14 as well as its proviso otherwise intact. In other words, the Legislature did not alter or change the contents of ingredients of section 14 except to the extent of reducing the period from three years to one year. This is despite the fact that the Law Commission in its recommendations relating to section 14 of the Act in its 59th Report in March, 1974 had asked for deletion of section 14 of the Act.

14. As already noticed, by the same Act 68 of 1976, section 14 was amended and section 13B was introduced in the Act. The language of section 13B is clear and unambiguous. The Legislature in its wisdom did not introduce any relaxation in Section 13B of the Act. ***There is nothing in the language of section which can suggest that the provisions of section 13B are simpliciter procedurally directed and can be moulded by the Court in exercise of its judicial discretion depending on the facts and circumstances of the case.*** *This provision is intended to liberalise the provisions relating to divorce. Being aware of the existing provisions, report of the Law Commission and the need of the society still the Legislature chose not to add any proviso granting relaxation to the conditions imposed under section 13B(1) and/or 13B(2).* ***It would not be permissible for the Court to read the expression 'living separately for a period of one year or more' as by adding the word 'may' or for such period as the Court in its discretion may consider appropriate.*** *We shall shortly proceed to discuss the purpose of introduction of section 13B and its object. It is a*

settled rule of interpretation that Court while interpreting the statutory provisions would not add or subtract the words from the section nor would it give meaning to the language of the section other than what is intended on the plain reading of the provision." (emphasis supplied)

32. The court further observed that the statutory requirement of minimum period is *sine qua non* to the filing of the petition and, in absence thereof, the petition would be incomplete and the court would be devoid of jurisdiction to entertain the same. It observed thus:

20. Purposive approach is not unknown to Indian laws. In modem jurisprudence, we have taken flair to discard liberal approach in favour of purposive approach. Dharmashastra advocates purposive approach since ancient times even though their reverence for the letters of the sacred law was almost devotional. It was considered that decision was never to be made solely by having recourse to the letters of the law, for a decision not according to the reason of law would occasion miscarriage of justice. Letters of law and reason of law are not synonymous terms but they both help in proper interpretation of law. Reason for enacting the law could be the reason for sustaining the law and it need in no way destroy the letters of law. ***The Legislature in its wisdom and being aware of other existing provisions of the Act, other laws and the opinion of the society, opted for insertion of section 13B in its present form without any intent to convert divorce from statutory satisfaction to whim of the parties. The period of one year 'living separately' is sine qua non to the filing of the petition under section 13B and as such, its waiver would be impermissible as per any settled canons of interpretation.*** *The Court gets jurisdiction to entertain and decide the petition only after these ingredients are satisfied. Non-compliance of these provisions may even affect the jurisdiction of the Court as the petition would lie beyond the statutorily specified essentials and, thus, in law, be a defective or an incomplete petition".*

(emphasis supplied)

33. Pertinently, in ***Sankalp Singh v. Prarthana Chandra,*** 2013 (135) DRJ 487 (DB), a Coordinate Bench of this Court took a contrary view and held that a petition for divorce on mutual consent can be filed before the completion of one year from the date of separation. Although it clarified that the divorce will be decreed only after the completion of one year of marriage. The Court acknowledged the existence of multiplicity of views on the subject. The Court notes that the first view is to treat divorce under Section 13, and that under Section 13B differently, as the former is based on the fault theory i.e. fault of one spouse – thereby giving remedy to the other, whereas the latter is based on mutual understanding of the parties to part ways after living separately for one year. It notes thus:

> *"12. The cleavage of judicial opinions arises from the interpretation of the interplay of the said Sections of the Act. Pertinently, Section 13B of the said Act was inserted subsequently by Act 68 of 1976 when certain amendments were also simultaneously carried out to Section 14 of the said Act. Thus, one judicial view is that Section 13B is a Code by itself which is different from the grounds of divorce provided under Section 13(1) of the said Act. The philosophy of Section 13 of the said Act is that one of the spouses has to allege and prove the grounds of divorce against the other spouse and should not be taking advantage of his/her own wrong. This is, thus, based on a fault theory. Section 14 restricts presentation of such a petition for divorce within the period of one (1) year from the date of marriage. However, the proviso to sub-section (1) of Section 14 of the said Act allows presentation of a petition even before the end of one (1) year from the date of marriage on the ground that "a case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent". Such exceptional hardship and depravity would, thus, have to be established by the petitioner in order to avail of the proviso to sub-section (1) of Section 14 of the said Act.*

> *13. On the other hand Section 13B of the said Act though appears between Section 13 and Section 14 of the said Act in the statute was introduced subsequently by Act 68 of 1976 and this provision is a complete Code by itself. The reason for this is that it is not a new ground for grant of divorce within the theme of Section 13 of the said Act but introduced the concept of a divorce by mutual consent, i.e., parties without alleging anything against each other and without proving any of the grounds under Section 13 of the said Act can agree to go in for a divorce by mutual consent provided they satisfy the three ingredients mentioned aforesaid.*
>
> *14. One of the essential ingredients provided therein is living separately for a period of one (1) year and, thus, unless this ground is satisfied the very basis of presentation of a petition for divorce under Section 13B of the said Act does not exist. Thus, the proviso to sub-section (1) of Section 14 of the said Act would have no application to presentation of a petition under Section 13B of the said Act. Needless to add that this would only be the first motion and there has to be a compulsory wait/re-think period of, at least, six (6) months and not more than eighteen (18) months when the second motion has to be filed and the Court has to be satisfied about the joint pleas of the parties. Thus, there can be no waiver of this one (1) year period from the date of the marriage.*

34. Thereafter, the Court explains the second view, as per which the proviso to Section 14 would apply equally to the time period specified in Section 13B(1), as it does to Section 13. Observing that the non-obstante clause in Section 14 must prevail, the Court notes thus:

> *16. The second set of opinion is and would be based on different legal understandings. At the stage when by Act 68 of 1976 Section 13B was introduced in the said Act, the provisions even of Section 14 of the said Act were amended. The legislature cannot be said to be ignorant of the provisions of*

Section 14 of the said Act when it introduced Section 13B of the said Act. The provisions of Section 14 of the said Act begins with a 'notwithstanding' clause, i.e., "Notwithstanding anything contained in this Act". Thus, irrespective of any other provision of the said Act, no petition for dissolution of marriage is to be presented within the period of one (1) year of the marriage (the period being modified by the amending Act 68 of 1976). ***Thus, the proviso to sub-section (1) of Section 14 of the said Act which permits presentation of a petition within the period of one (1) year of the marriage would equally apply to a petition to be presented under Section 13B of the said Act****.*

24. On a conspectus of the aforesaid material and judicial pronouncements we are of the view that the provisions in question must be harmoniously construed to give a meaning to all of them as also to the intent of the legislature……."(emphasis supplied)

35. We may also take note of the decision of the Division Bench of the High Court of Allahabad in ***Arpit Garg v. Ayushi Jaiswal***, 2019 SCC Online All 5521, wherein, while dealing with waiver of the period of one year, provided in Section 13B of the Act, and applicability of the proviso to Section 14 of the Act to Section 13B, the Court disagreed with the decision of this Court in ***Sankalp Singh*** (Supra). With due respect, we are inclined to agree with the view taken by this Court in ***Sankalp Singh*** (Supra), that the period of one year stipulated in Section 13B(1) may be waived provided a case of "exceptional hardship" or "exceptional depravity" is made out before the Court, and we disagree with the view of the Allahabad High Court aforesaid.

36. The scheme of Section 14 is fairly clear. Pertinently, Section 14 of the Act intends to discourage the couples from breaking the sacred bond of marriage in haste. It provides a window for reconsideration and

reconciliation. It is an acknowledgement that temperamental differences between the parties could be addressed with time, and must not become a reason for breaking off marriage. The mandatory one year period granted under Section 14 of the Act, encourages couples to cool down, and give a rethink to preserve their marriage. The only exceptions when the Court may waive the mandatory requirement of the marriage being, at least, one year old, are in the cases of "exceptional hardship" and "exceptional depravity".

37. Notably, Section 14 begins with a non-obstante clause which conveys that irrespective of anything contrary being stated in any other provision of the Act, Section 14 would prevail with respect to the subject matter covered thereunder i.e. due minimum time period and conditions of waiver thereof. This view is supplemented by the language of Section 13B which makes it *"subject to the provisions of this Act"*, including subject to Section 14. The proviso to Section 14 is applicable to petitions filed for divorce, equally under Section 13 and under Section 13B.

38. No doubt, the requirement of minimum one year period of separation before filing the petition for divorce on mutual consent under Section 13B(1) is backed by a sound objective. The essential idea is to ensure that the parties experience the feeling of separation for a certain period before finally choosing to part ways. It also envisions the possibility of escalation of normal wear and tear in the family, to the extent that parties rush to the court in momentary passion, and seek to provide a safety value against such impulsive conduct. A divorce on the ground of "mutual consent" is premised on freewill or free consent of both the parties. Formation of free consent is not expected to be an instantaneous process, and the requirement of minimum period ensures that the consent is backed by patient thought and

consideration of all the pros and cons of the relationship. Thus, permitting tinkering of that one year period in an ordinary situation would be diluting the intent of the Parliament, and would amount to tinkering with the entire fabric with which Section 13B has been woven. It would run contrary to the wisdom that a marriage must be given reasonable time to work, and only when that reasonable time has expired, could it be concluded that the marriage be dissolved. However, what has been enacted as a measure of abundant caution to preserve the marital tie, must not become a tool of subversion. Over the course of time, the constitutional jurisprudence has evolved to attach great importance to individual autonomy and personal dignity. The import of these principles is to protect those couples who are forced to live in conditions of exceptional hardship, where one of them is subjected to exceptional depravity. Such cases are exceptional in nature and the general rule under Section 13B(1) or under Section 14(1) must be relaxed in such circumstances as envisaged by Section 14 itself. The legislature has enacted the proviso to Section 14 as a measure to be adopted in such exceptional circumstances. Of course, unless a party is able to make out a case falling in one of the two exceptions i.e. "exceptional hardship", or "exceptional depravity", the general rule shall prevail, that the parties must wait for the cooling off period.

39. The legislative way out under the proviso to Section 14 gets activated only in exceptional circumstances, and such circumstances must be established by the party seeking the benefit of waiver of time before the court. The peculiar facts and circumstances of the case would dictate whether a circumstance of "exceptional hardship" or "exceptional depravity" is made out in the case.

40. Having analysed the legal position, we may now proceed to examine whether the appellants' case calls for waiver of minimum period of separation. Denial of conjugal relationship has been stated to be the circumstance of "exceptional hardship" or "exceptional depravity" in the case before us.

41. Before proceeding, it would be relevant to advert to the difference between various terms which are used often in this context, which are - cohabitation, consummation, conjugal relationship and denial of sex.

i. Consummation according to the Cambridge Dictionary means "the act of making a marriage or romantic relationship complete by having sex."

ii. Cohabitation according to the Merriam Webster dictionary means "to live together as or as if a married couple"

iii. Conjugal according to the Cambridge Dictionary means "connected with marriage or the relationship between two married people, especially their sexual relationship"

42. Sexual relationship is an integral, but not the beginning and end of, cohabitation. Consummation is simply one instance to make a marriage complete, whereas a conjugal relationship would mean the continuous sexual relationship between a husband and wife over their course of marriage. Cohabitation is the complete marital status of a married couple, where sexual relationship is a natural concomitant of that relationship. There can be consummation without cohabitation, and vice-versa. The term cohabitate simply means two individuals living together. These terms are inherently different and must not be treated as the same. The fact of the matter is that these terms are used in different contexts under different

provisions to show the difference in intent by the legislature. In the present case, denial of cohabitation and denial of sex co-exist.

43. In order to answer whether the denial of conjugal relationship amounts to *exceptional hardship or exceptional depravity*, we begin by noting the linguistic meanings of the expressions used herein. In terms of the Oxford English Dictionary, the meaning of the words are as follows :-

i. Exceptional - '*very unusual*'

ii. Depravity - '*the state of being morally bad'*

iii. Hardship - '*a situation that is difficult and unpleasant because you do not have enough money, food, clothes, etc*.'

44. According to the Merriam Webster Dictionary these words means :-

i. Exceptional - '*forming an exceptionor rare*'

ii. Depravity - '*a corrupt act or practice'*

iii. Hardship - '*something that causes or entails suffering or privation*'

Lastly, according to the Cambridge Dictionary these wordsmean :-

i. Exceptional - '*much greater than usual'*

ii. Depravity - '*the state of being morallybad'*

iii. Hardship - '*difficult or unpleasantconditions of life*'

45. We may now consider the meanings of words "exceptional", "depravity" and "hardship" in the context of the legal issue involved herein. In layman terms, the word 'exceptional' must mean something that is out of the ordinary, which must be seen to be such, that is not to be expected in a general fact situation or scenario. The immediate enquiry that follows here is whether non-indulgence of a married couple in sexual activity, admittedly owing to temperamental differences, could be regarded as so "exceptional"

so as to attract immediate dissolution of the marriage, without even waiting for the one-year period which contemplates an opportunity of reconciliation. In our considered view, the answer lies in the negative. For, if there are serious, temporal or behavioral issues between a married couple, it is nothing but expected that they would not be maintaining a healthy conjugal relationship.

46. We may now examine the word 'depravity' in the context of a marital relationship. It must mean wickedness or immoral behaviour of such a nature, which cannot be expected by any individual in any reasonable situation. Such behaviour is marked by perversity and lack of moral decency. Depravity cannot be taken to mean deprivation i.e. of being deprived. A mere incompatible marital relationship, or one which has irreconcilable differences due to temporal or behavioral differences would not, in itself, lead to the causing of exceptional depravity by either of the parties to the other. The party alleging exceptional depravity in the conduct of the opposite party, would need to place before the Court the facts which constitute acts of exceptional depravity. Mere denial of sex by one, or both the parties to the other, cannot be described as an act of exceptional depravity. Such conduct cannot be described as wicked or immoral behavior, or as perverse behavior lacking in moral decency, more so when temperamental differences lie at both ends. No doubt, it may tantamount to a matrimonial misconduct, but that is not what we are examining presently. There could be myriad situations which may qualify as "exceptional depravity". However, it would not be wise to define or limit the same. The Act itself mentions some acts, which may amount to exceptionally depraved conduct. Section 13(2)(ii), for instance, entitles the wife to seek divorce on

the ground that the husband has, since the solemnization of the marriage "*been guilty of rape, sodomy or bestiality*". Such conduct may qualify as exceptionally depraved conduct.

47. Lastly, we may analyse the meaning of the word 'hardship'. The word hardship simply means severe suffering or unpleasantness. The proviso to Section 14(1) qualifies the word "hardship" by pre-fixing the same with the word "exceptional". The denial of sex by one spouse to the other, or by both of them to each other may certainly constitute "hardship", but it cannot be said to be "exceptional hardship".

48. Having said so, we hasten to add that 'depravity' and 'hardship' are essentially the *effects* of certain actions/inactions on the aggrieved partner or both, as in the instant case. It is not that, as a matter of generality, deprivation of sex for a period of time is known to cause any physical or psychological or mental problems bordering on extreme hardship or exceptional depravity. We may usefully refer to an Article by *Kim, J.H., Tam, W.S. & Muennig, P. – "Sociodemographic Correlates of Sexlessness Among American Adults and Associations with Self-Reported Happiness Levels: Evidence from the U.S. General Social Survey", Arch Sex Behav 46, 2403–2415 (2017)*, funded by National Institutes of Health. The learned Authors founded the said study on the U.S. General Social Survey – National Death Index 2008, analyzing the sociodemographic and life style factors associated with past-year sexlessness and self-reported happiness among American adults (sample size 17,744) and, *inter alia*, observed:

> *"Perhaps most surprising was that sexually inactive people were no less happy than their sexually active counterparts. Most noteworthy, never-married participants showed virtually*

identical levels of happiness levels regardless of their sexual activity status. Although sexual inactivity among physically healthy adults has often been seen as an indicator of poor emotional well-being in popular psychology (Schnarch& Maddock, 2003; Shreiner-Engel &Schiavi, 1986; Weiner-Davis, 2003), a study conducted on a nationally representative sample of American women revealed that the majority of women with low sexual desire (72.5%) did not report distress over their lack of interest in sex (Rosen et al., 2009). Our results also strongly suggest that sexual activity per se is not a requisite component of emotional well-being. Previous research in the area of psychological well-being and subjective well-being supports the correlation of positive, close relations with others (relatedness) as one of the most important components of human well-being (Argyle, 1987; Myers, 1992). Sexual activity does not capture all romantic feelings, nor does it capture the quality of intimate relationships with others. Based on our study results, there may be other dimensions of close human relationships that are much more integral aspects of well-being and that sexual activity may either be replaced by these other dimensions, or is peripheral to the core areas of emotional well-being. The other domains that are common to well-being theories include having control over the course of one's life (autonomy), feeling in control of one's situation (competency/mastery) (Ryan & Deci, 2001) as well such domains as self-acceptance, life purpose, and personal growth (Ryff & Keyes, 1995; Ryff & Singer, 1998), none of which explicitly include sexual activity."

49. Reference may also be made on the decision of a learned Single Judge in ***Meganatha Nayagar v. Susheela***, 1956 SCC Online Mad 320, wherein the Court has discussed the meaning of "exceptional", "hardship" and "depravity" used in Section 14 of the Act as follows:

"14. In deciding whether or not to grant leave, the Court would act on prima facie evidence contained in the leave application and respondent's affidavit if filed. Simpson v. Simpson, (1954) 2

All ER 546 (A), Winter v. Winter, 1944 P 72 (B). Such a decision will not be reviewed on appeal if there was material in support of it.

15. Section 2(1) of the English Act and Section 14 of the Indian Act does not define "exceptional hardship" or "exceptional depravity".

16. The ordinary lexicon meanings of the three words, 'exceptional', 'hardship' and 'depravity' may be borne in mind.

17. In regard to the term 'exceptional' Funk & Wag-nall's Standard Dictionary defines it as:

> *"of a nature to be excepted; constituting or relating to an exception; unusual; uncommon."*

18. Webster's International Dictionary of English Language:

> *"Exceptional which is itself an exception and so is out of the ordinary, that is, exceptionable to which exception may be taken and which is therefore objectionable; as an exceptional opportunity, or exceptional conduct."*

19. Murray's New English Dictionary:

> *"Of the nature or forming an exception; out of the ordinary course, unusual, special."*

20.Stroud's Judicial Dictionary (3rd Edition) 1953:

> *"**The words 'exceptional hardship' in relation to petitions for divorce indicate that the petitioner has suffered hardship greater than ordinarily associated with those cases in which petitioners successfully establish their claim for divorces on a ground of cruelty (Martin v. Martin, (1941) NI 1 at p. 14) (C); refusal to permit a sexual intercourse unless a contraceptive was used did not come within the phrase (Fisher v. Fisher,***

(1948) P 263 (D); see also Bowman v. Bowman, (1949) P 353 (E).)"

21. The word 'hardship' is defined in Funk & Wagliall as 'unjust; harsh or oppressive treatment; injustice; as this law works hardship to many.' Webster defines the term as 'that which is hard to bear, as privation, injury, etc.' Murray defines as 'a condition which presses Unusually hard up on one who has to endure it; an infliction of severity or suffering.'

22. The term 'depravity' is described in Funk & Wagnall as 'the state of being depraved or corrupt especially, moral degeneracy, wickedness; a wicked act of habit.' Webster defined it as 'crookedness; perverseness; state of being depraved, corruption, wickedness.' Murray defines as 'perversion of moral faculties; abandoned wickedness.'

23. ***This S. 14 provides restrictions presumably designed to prevent hasty recourse to legal proceedings before the parties have made a real effort to save their marriage from disaster."***(emphasis supplied)

50. Thus, on a literal as well as logical interpretation of the terms used in the proviso to Section 14 of the Act, we are of the view that denial of cohabitation in a marriage cannot be regarded as "*exceptional hardship*" or "*exceptional depravity*". It could form the basis of any other legal remedy, but would not call for waiver of mandatory period of one year which is to be waived as a matter of exception, and not as a matter of rule.

51. It would not be out of place to consider the other provisions of the Act regarding divorce, for instance Section 12 and 13 of the Act. It is settled law that denial of sex could form the basis of an allegation of cruelty and divorce may be sought on those grounds.

52. In ***Rita Nijhawan v Bal Kishan Nijawan*** 1973 SCC Online Del 52 the Court observed:

"Thus the law is well settled that if either of the party to a marriage being of healthy physical capacity refuse to have sexual intercourse the same would amount to cruelty entitling the other party to a decree. In our opinion it would not make any difference in law whether denial of sexual intercourse is the result of sexual weakness of the respondent disabling him from having a sexual union with the appellant, or it is because of any wilful refusal by the respondent; this is because in either case the result is the same namely frustration and misery to the appellant due to denial of normal sexual life and hence cruelty. Prior to Gollins' case in 1963 the courts in England had been taking the view that unless cruelty was aimed at by either of the parties the same would not amount to cruelty. But that is no longer a correct view and therefore subsequently the courts have proceeded on the basis that it is not necessary to prove the culpability of the respondent in order to hold him guilty of cruelty. What has to be found in each case is whether the act is such which the complaining partner should not be asked to endure. The court of appeal in Sheldon v. Sheldon (1966-2-All E.R. 257) (12) granted a decree to the wife on the finding that the husband's ***persistent refusal of sexual intercourse over a long period without excuse, caused a grave injury*** *to the wife's health and amounted to cruelty on his part. Lord Denning observing that:*

> *'the categories of cruelty are not closed. The persistent refusal of sexual intercourse is not excluded.'*

……The marriage has really been reduced to a shadow and a shell and the appellant has been suffering misery and frustration. In these days it would be unthinkable proposition to suggest that the wife is not an active participant in the sexual life, and, therefore, the sexual weakness of the husband which denies normal sexual pleasure to the wife is of no consequence and, therefore, cannot amount to cruelty. ***Marriage without sex is an anathema. Sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely***

favourable influence on a woman's mind and body. The result being that if she does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifies woman's brain, develops her character and trebles her vitality. It must be recognized that nothing is more fatal to marriage than disappointments in sexual intercourse.

The appellant is only in mid thirties. To force the appellant to this ***life of frustrating and unsatisfied sexual life which would inevitably damage her health both mental and physical****, is nothing but cruelty."* (emphasis supplied)

53. Thus denial of sexual relationship by one party, over a long period of time, may lead to 'cruelty' on the other spouse.

54. Furthermore, Section 12 of the Act deals with annulment of voidable marriages. The marriage is voidable, if the marriage is not consummated owing to impotence of the respondent. There is no minimum time limit – or waiting period prescribed, to file a petition under this section for annulment of marriage. This provision is applicable only in the case of impotency of the respondent, and non-consummation of marriage due to temperamental or behavioral differences is not contemplated as grounds for annulment. To prefer a petition to seek annulment of marriage on the ground of impotence of the respondent, there is no waiting period prescribed and Section 14 is not attracted. This is for the obvious reason, that impotence of the respondent would not get cured, even if the aggrieved spouse is required to wait for the elapse of the one year period from the date of marriage.In the present case, it is not the case of the parties that either of them is impotent. The denial of sex, or non-consummation of the marriage in the present case is a voluntary act of abstinence by the parties. Consequently, denial of conjugal relationship, or non-consummation due to temperamental/ behavioral

differences can only be a ground for divorce, under cruelty.

55. The Hindu Marriage Act serves the twin purpose of:

(a) codifying the rights and obligations of individuals governed by the said Act in relation to their marriage, and;

(b) advancing the societal purpose i.e., to protect institution of marriage.

56. To reiterate, the proviso to Section 14 has to be seen and read purposively, to advance the object of the Hindu Marriage Act. The word "exceptional hardship" and "exceptional depravity" have to be viewed from the perspective of both purposive and textual interpretation so as to advance the object of the law. Section 13 of the Act, which sets out the grounds for divorce-based on matrimonial misconduct of the respondent, serves the aggrieved spouse's individual purpose to achieve the desire to obtain divorce and end the matrimonial bond. On the other hand, Section 14 serves the societal purpose, namely, preserving sanctity of a marriage as an institution, and to prevent impulsive rush to the Court by one, or both parties, to end their relationship, without due consideration of the consequences.The intent behind the framing of Section 13, 13B and Section 14 of the Hindu Marriage Act was to protect both – the individuals, as also the marriage. What the legislature has sought to address by way of divorce on the ground of cruelty, cannot be categorized as exceptional hardship or depravity so as to by-pass the well established procedure.

57. In the light of the discussion above, we are of the view, that though denial of conjugal relationship is a ground for divorce, and tantamounts to cruelty, but the same cannot be said to amount to "*exceptional hardship*". The exception of "*exceptional hardship*" or "*exceptional depravity*" would be attracted in extenuating circumstances, and is not intended to mean, or be

treated, on the same lines as cruelty simpliciter.

58. Once the Parliament, in its wisdom, has legislated that denial of cohabitation/conjugal relationship over a period of one year, or more, would tantamount to cruelty, it cannot be said that denial of sex simpliciter within the period of one year, would be a case of exceptional hardship. Thus we reject the submission of the appellant that the denial of conjugal relations by both parties is such, that it causes "*exceptional hardship or exceptional depravity*" to either, or both of them.

59. We, for the reasons stated above, and with due respect, do not agree with the view taken by the High Court of Punjab and Haryana in ***Shivani Yadav v. Amit Yadav*** (supra) and High Court of Kerala in ***Ratheesh M. v. Dhanya K. V.*** (supra).

60. In view of our discussion above, we reject this appeal and uphold the order of the Family Court rejecting the application of the parties filed under the proviso to Section 14 of the Hindu Marriage Act, 1955.

61. We reserve the right of the parties to move the appropriate court independently, after the expiry of one year of separation.

(VIPIN SANGHI, ACJ) **(JASMEET SINGH, J)**

APRIL 18, 2022