



\$~4

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

% ***Date of decision: 20.01.2026***

+ **MAT.APP.(F.C.) 443/2025**

NUPUR GARG

.....Appellant

Through: Mr. Abhishek Wadhwa, Mr. Somyaa Gurung & Mr. Saurabh Yadav, Advs. with appellant in person.

versus

DWARKESH AHUJA

.....Respondent

Through: Mr. Dhiraj Bhiduri, Adv. with respondent present through VC.

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT

%

1. The present appeal has been filed under Section 19 of the Family Court Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 ("HMA") against the Order dated 09.12.2025 passed by the learned Judge, Family Court-02, South District, Saket Courts, Delhi ("Family Court") in HMA No. 1821 of 2025, whereby the appellant's application under Section 14 HMA seeking leave to present a joint petition for divorce by mutual consent under Section 13-B (1) HMA prior to expiry of one year from the date of marriage, was dismissed, and consequentially, the main petition was also held to be not maintainable.

2. The marriage between the parties was solemnized on 30.03.2025 at Arya Samaj Mandir, Khirki Village, New Delhi. Subsequently, the marriage was registered on 02.04.2025 before the Office of the District Magistrate,



South, New Delhi. It is an admitted position that the parties never cohabited even for a single day, the marriage was never consummated, and immediately after the marriage, both parties continued to reside separately at their respective parental homes.

3. Thereafter, owing to irreconcilable differences and complete incompatibility discovered immediately after marriage, the parties jointly decided to seek dissolution of marriage by mutual consent.

4. Since the joint petition under Section 13-B(1) HMA was presented within seven months of marriage, an application under Section 14 HMA was filed seeking leave of the Court to present the petition prior to expiry of one year.

5. By the impugned order, the learned Family Court declined to grant leave under Section 14 HMA, holding that the parties had failed to establish a case of “exceptional hardship” warranting relaxation of the statutory bar. Further, it held that they had not made sufficient or sincere efforts to preserve and save the marriage, and that the subsequent registration of the marriage shortly after its solemnization militated against and diluted their claim of exceptional hardship.

6. Learned counsel for the parties submits that the respondent is presently residing in Canada, whereas the appellant is residing in India. It is further submitted that the appellant is required to take care of her aged parents and is neither willing nor in a position to relocate, while the respondent is similarly not willing or able to relocate to India. These circumstances, though unfortunate, are stated to be unavoidable and beyond the control of the parties, and have resulted in their continued separation, with no realistic or



practical possibility of resumption of matrimonial life, thereby giving rise to exceptional hardship.

7. We have heard the learned counsel for the parties and perused the record.

8. At the outset, it is pertinent to note the Section 13-B(1) HMA, which reads as under:

“(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.”

9. Section 14 HMA provides as under:

“(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.”

10. Learned counsel for the parties have drawn our attention to the judgment passed by the Full Bench of this Court in MAT.APP. (F.C.) 111/2025, titled **Shiksha Kumari v. Santosh Kumar**, decided on 17.12.2025, wherein the Court held as under:

“57. We may summarise our conclusions in response to the questions posed, as follows:

57.1. The statutory period of 01-year prescribed under section 13B(1) of the HMA as a pre-requisite for presenting the first motion, can be waived, by applying the proviso to section 14(1) of the HMA;

57.2. The waiver of the 01-year separation period under section 13B(1) of the HMA does not preclude waiver of the 06-month cooling-off period for filing the second motion under section 13B(2); and waiver of the 01-year period under section 13B(1), and the 06-month period under section 13B(2), are to be considered independently of each other;

57.3. Where the court is satisfied that the 01-year period under section 13B(1) and the 06-month period under section



13B(2) of the HMA deserve to be waived, the court is not legally mandated to defer the date from which the divorce decree would take effect, and such decree may be made effective forthwith;

57.4. Such waiver is not to be granted merely for the asking but only upon the court being satisfied that circumstances of ‘exceptional hardship to the petitioner’ and/or ‘exceptional depravity on the part of the respondent’ exist, while also testing the case on the anvil of the considerations set-out in Pooja Gupta;

57.5. Waiver, as above, can be granted both by the Family Court as well as the High Court; and

57.6. As contemplated in the proviso to section 14(1) of the HMA, where a court finds that the waiver of the 01-year period under section 13B(1) has been obtained by misrepresentation or concealment, the court may defer the date on which the divorce would take effect, as may be considered appropriate; or may dismiss the divorce petition, at whichever stage it is pending, without prejudice to the right of the parties to present a fresh petition under section 13B(1) of the HMA after expiration of the 01-year period, on the same or substantially the same facts as may have been pleaded in the petition so dismissed.”

(emphasis added)

11. In the present case, the admitted facts demonstrate that the parties never cohabited, the marriage was never consummated, and they have lived separately since the very inception of the marriage. There are no children from the wedlock, nor is there any reasonable probability of their living together in future. These facts are not in dispute and strike at the very foundation of a subsisting matrimonial relationship.



12. In such circumstances, insisting upon continuation of a marriage which exists only in law, and not in substance, would amount to compelling the parties to endure a relationship devoid of any matrimonial foundation, thereby causing avoidable hardship rather than advancing the object of the statute.

13. With respect to the reasoning adopted by the learned Family Court that registration of marriage negates the claim of hardship cannot be sustained. Registration of marriage is merely a statutory mandate, and by itself, cannot be determinative of matrimonial harmony, intention to cohabit, or the viability of the marital relationship.

14. Likewise, the observation that the parties did not make adequate efforts to save the marriage requires reconsideration. Where the marriage has never been acted upon by the parties through cohabitation, the question of saving such a marriage does not meaningfully arise.

15. Therefore, as per Section 14 HMA, this Court is required to examine whether the present case discloses “exceptional hardship” and whether there exists any reasonable probability of reconciliation between the parties. In view of the undisputed position that the marriage has never been consummated, the parties have lived separately since inception, reside in different countries, and there is no material to indicate any possibility of resumption of matrimonial life, coupled with the fact that the health condition of the appellant’s aged parents does not presently permit her to relocate to Canada, while the respondent is also unable to relocate to India, insisting upon adherence to the statutory period of one year would serve no meaningful purpose. On the contrary, it would only result in prolonging a marriage that exists merely in law and not in substance, thereby causing exceptional hardship within the meaning of the proviso to Section 14(1) of the HMA.



16. This Court is, therefore, satisfied that the present case squarely falls within the exception carved out under Section 14 of the HMA.

17. Accordingly, the Order dated 09.12.2025 passed by the Family Court is set aside.

18. The application under Section 14 HMA is allowed, and leave is granted to the parties to present their joint petition for divorce by mutual consent under Section 13-B (1) HMA forthwith without waiting for expiry of one year from the date of marriage.

19. The matter is remanded to the learned Family Court concerned to proceed with the petition under Section 13-B HMA in accordance with law, expeditiously.

20. The appeal stands allowed in the above terms.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

JANUARY 20, 2026

nc