

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 10170 of 2023

Petitioner :- Pooja And Another

Respondent :- Sayal

Counsel for Petitioner :- Vijay Singh Sengar,Ajay Singh Sengar

Hon'ble Prakash Padia,J.

1. Heard learned counsel for the petitioners and perused the record.
2. In view of the order proposed to be passed herein, no useful purpose would be served by putting the opposite party to notice and keeping this petition pending before this Court. However, in case the opposite party feels aggrieved by the order his/her right to seek modification/variation of the order is being kept reserved.
3. The basic relief sought by the petitioners in the present petition under Article 227 of the Constitution of India is to direct the court below to decide H.M.A. Case No.377 of 2023 (Pooja and another Vs. Sayal) under Section 13-B Hindu Marriage Act expeditiously.
4. It is argued by learned counsel for the petitioners that the aforesaid divorce case has been filed with the consent of both the parties. It is argued that the petition was filed in the month of July, 2023 in which an order was passed on 23.07.2023 referring the matter to the Mediation Center fixing 16.01.2024.
5. In this view of the matter no relief could be granted.
6. Insofar as the present case is concreted, in case the parties made a joint application before the Court concerned as per law laid down by the Hon'ble Supreme Court in the case of **Amardeep Singh Vs. Harveen Kaur, reported at (2017) 8 SCC 746**. Paragraph 14 & 18 of the aforesaid judgement is reproduced hereinbelow:-

"14. He submitted that the discretion to waive the period is a guided discretion by consideration of interest of justice where there is no chance of reconciliation and parties were already separated for a longer period or contesting proceedings for a period longer than the period mentioned in Section 13B(2). Thus, the Court should consider the questions:

i) How long parties have been married?

ii) How long litigation is pending?

iii) How long they have been staying apart?

iv) Are there any other proceedings between the parties?

v) Have the parties attended mediation/conciliation?

vi) Have the parties arrived at genuine settlement which takes care of alimony, custody of child or any other pending issues between the parties?

18. 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 13B(2), it can do so after considering the following :

i) the statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(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 XXXIIA 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."

6. In case the parties applied joint application before the Court concerned, the same shall be decided expeditiously.

Order Date :- 4.12.2023

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