

Court No. - 39

Case :- FIRST APPEAL No. - 1147 of 2023

Appellant :- Nikhil Singhanian

Respondent :- Smt. Mehal Gupta

Counsel for Appellant :- Syed Ali Murtaza

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Syed Aftab Husain Rizvi,J.

1. Heard Sri Syed Ali Murtaza, learned counsel for the appellant and Sri Atul Mishra, Advocate, holding brief of learned counsel for the respondent.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984 arising from the order dated 27.09.2023 passed by the Principal Judge, Family Court, Saharanpur in Case No. 1226 of 2023 (Smt. Mehal Gupta Vs. Nikhil Singhanian). By that order, the learned court below has effectively refused to waive the cooling period under Section 13-B(2) of the Hindu Marriage Act, 1955. Thus, despite the waiver application filed by the parties alongwith their joint petition filed under Section 13-B of the Act, the learned court below has directed the first motion petition to be put up on 23.01.2024.

3. Submission is, the marriage between the parties was performed on 19.04.2022. From the very beginning irreconcilable dispute arose between them. Those could not be resolved despite efforts made. The misunderstanding grew to the point where father of the respondent lodged an FIR in Case Crime No. 162 of 2023, under Sections 498-A, 377, 328, 354, 323 and 506 IPC read with Section 3/4 D.P. Act, Police Station - Sadar Bazar, District - Saharanpur.

4. Upon challenge raised to the FIR, at the instance of the appellant and his family members the writ Court referred the matter to the Mediation Center in Criminal Misc. Writ Petition

No. 7087 of 2023 (Nikhil Singhania & Ors. Vs. State of U.P. & Ors.).

5. In such circumstances, while mediation proceedings were pending, on the intervention and advice of certain common friends and family, the parties were able to resolve their differences by means of written settlement agreement dated 22.06.2023. A copy of the same has been annexed to the present proceeding. Perusal of the same reveals, upon due consideration of the respective stands, the parties have agreed to dissolve their marriage in the best interest of both parties. In lieu of permanent alimony, a sum of Rs. 61 lakhs was agreed to be paid by the present appellant to the respondent. Of that amount Rs. 31 lakhs has already been paid out to the respondent and a post-dated cheque of Rs. 30 lakhs has been handed over to her to be encashed on the date their marriage is dissolved.

6. Seen in that light, the parties have agreed to dissolve their marriage. They appear to have taken that decision upon due consideration of their existing circumstance.

7. In **Amardeep Singh Vs. Harveen Kaur, (2017) 8 SCC 746**, it was observed as below :

"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 13B (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 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 32A 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 13B(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."

8. Perusal of the joint petition reveals, the parties have been living separately since 23.12.2022. Joint petition for dissolution of marriage was filed on 10.08.2023 i.e. well after six months from the date of their separation. As to efforts made to settle the dispute, such efforts were made both pursuant to mediation offered by the writ Court as also such mediation appears to have taken place between the parties outside the Court as is clear from the recital of the settlement agreement dated 22.06.2023. Then, there are no children born from the marriage. The parties are still young.

9. In such circumstances, no practical or useful purpose would be served in not waiving the cooling off period as on one hand there appears no room for reconciliation and on the other the parties have travelled to the distance to have agreed to dissolve their marriage. Part payment has already been made to the respondent which she has accepted. To keep such proceeding pending, without any good reason may only amount to prolonging the agony of the parties by keeping such marriage alive. A matrimonial relationship which is dead and for which there is no hope of revival serves no purpose either to the individuals involved in such relation or society in general.

10. Sri Atul Mishra, Advocate, holding brief of learned counsel

for the respondent states, there is absolutely no objection on part of the respondent to the waiver being granted. In fact, the joint motion petition was pressed seeking such waiver.

11. In similar circumstance in First Appeal No. 839 of 2023 (Vijay Agarwal Vs. Smt. Suchita Bansal), we had taken similar view following the same. Accordingly, we **allow** the present appeal and cooling period is waived. The learned court below may proceed to fix an early date in the proceedings within a period of two weeks from the date of production of a copy of this order.

Order Date :- 28.10.2023
Abhilash

(S. A. H. Rizvi, J.) (S. D. Singh, J.)