

Court No. - 4

Case :- MATTERS UNDER ARTICLE 227 No. - 10863 of 2023

Petitioner :- Dr. Ambrish Kumar Mishra

Respondent :- Swastika

Counsel for Petitioner :- Chandra Prakash Srivastava

Counsel for Respondent :- Ajay Pandey, Pawan Kumar Mishra

Hon'ble Prakash Padia, J.

1. Heard learned counsel for the parties and perused the record.
2. Present petition has been filed under Article 227 of the Constitution of India with the following prayer:-

"a) Issue a order or direction to the learned Principle Judge Family Court Allahabad to expedite the proceeding of the Matrimonial Petition No.1665 of 2023 (Swastika vs. Dr. Ambrish Kumar Mishra) filed by the parties under Section 13(B) of Hindu Marriage Act, 1955 and fixing an early date for second motion under Section 13(B) (2) of Hindu Marriage Act, 1955 waving the statutory period of six months."

3. It is argued by learned counsel for the parties that both the parties are ready for divorce and in this regard the case was filed under Section 13-B of the Hindu Marriage Act, but wholly illegally the cooling period as prescribed in the Act was not waived off by the Principal Judge, Family Court, Prayagraj while passing the order dated 25.8.2023. It is further argued that after the aforesaid order, two dates were fixed by the court below. The first date was 6.11.2023 for first motion and the next date fixed for second motion is 27.02.2024. It is next argued that the parties are entitled for the benefit of paragraph no. 14 of the judgment delivered by the Hon'ble Apex Court in case of **Amardeep Singh Vs. Harveen Kaur**, reported in **(2017) 8 SCC 746**. Counsel for the parties have also placed reliance upon a judgment delivered by the coordinate Bench of this Court on 31.1.2020 in **Matters Under Article 227 No. 692 of 2020 (Smt. Hem Lata Parihar and Another vs. State of U.P. and Another)**. The same is quoted as under:-

"This petition arises out of proceedings instituted under Section 13 of the Hindu Marriage Act before the learned Principal Judge, Family Court, Jhansi. By the order dated 24.12.2019 passed by the learned Principal Judge, Family Court, Jhansi, the waiver of six months period sought for by both the petitioners in the aforesaid proceedings for dissolution of their marriage has been declined.

This petition has been jointly filed by the husband and wife who are the parties to the proceedings before the learned trial court.

The petitioner No.1 / plaintiff is the wife of the petitioner No.2 who is the defendant

in the suit. The petitioners have moved an application for dissolution of their marriage by mutual consent before the learned court below.

The application of the petitioners for waiving of "cooling-off period of six months" contemplated under Section 13B(2) of the Hindu Marriage Act, 1955, has been denied by the learned trial court.

The concept of a "cooling-off period of six months" for grant of divorce in a petition for mutual divorce filed by both the parties is incorporated under section 13B(2) of the Hindu Marriage Act, 1955. The provision is extracted hereinunder for ease of reference:

"(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."

The mandatory nature or otherwise of the aforesaid "cooling-off period of six months" set out in the statute and came up before the Hon'ble Supreme Court in *Amardeep Singh Vs. Harveen Kaur*, reported at (2017) 8 SCC 746. The Hon'ble Supreme Court in *Amardeep Singh* (supra) held thus:

"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?

15. The Court must be satisfied that the parties were living separately for more than the statutory period and all efforts at mediation and reconciliation have been tried and have failed and there is no chance of reconciliation and further waiting period will only prolong their agony.

17. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling off the period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there

are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option."

Clearly the order passed by the learned trial court is not consistent with the judgment of the Hon'ble Supreme Court in Amardeep Singh (supra). The learned trial court is bound by law to be guided by the aforesaid judgment.

For the reasons stated in the preceding part of the judgment, the order dated 24.12.2019 is unsustainable in law. The order dated 24.12.2019 passed by the learned Principal Judge, Family Court, Jhansi in case No.1464 of 2019 (Smt. Hemlata Vs. Vikrant Patel) is liable to be set aside and is accordingly set aside.

The matter is remitted to the learned trial court / Principal Judge, Family Court, Kanpur Nagar to decide the application afresh in light of the law laid down by the Hon'ble Supreme Court in the case of Amardeep Singh (supra) positively within a period of one month from the date of receipt of a certified copy of this order.

The parties are directed to appear before the learned trial court / Principal Judge, Family Court, Jhansi on 12.02.2020.

The petition is allowed. "

4. Considering the facts and circumstances of the case, this Court is of the prima facie opinion that the parties are entitled for the benefit of paragraph no. 14 of the judgment delivered by the Hon'ble Apex Court in case of **Amardeep Singh (supra)**.

5. In this view of the matter, the court below before whom the aforesaid case is pending is directed to decide the application filed by the parties for mutual divorce in accordance with law, expeditiously and positively within a period of six weeks from the date of presentation of certified copy of this order.

6. The parties are directed to appear before the court below along with the certified copy of this order on 29.11.2023.

7. With the above, the present petition is disposed of.

Order Date :- 21.11.2023

S.K.