

Court No. - 39

Case :- FIRST APPEAL No. - 1249 of 2023

Appellant :- Atul Kumar

Respondent :- Smt. Sadhana Devi

Counsel for Appellant :- Kailash Singh Yadav

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri Kailash Singh Yadav, learned counsel for the appellant and Sri Murli Dhar Yadav, learned counsel for the respondent.

2. Present appeal has been filed under Section 19 of the Family Courts Act, 1984, arising from the order of the learned Additional Principal Judge, Family Court No. 2, Kanpur Nagar dated 19.09.2023 in Case No. 2122 of 2023, whereby the learned court below has rejected the application filed by the parties, seeking waiver of cooling period of six months in proceeding with the second motion joint petition under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act').

3. Having heard learned counsel for the parties and having perused the record, it transpires, the marriage between the parties was solemnized on 11.07.2022. They parted company on 14.08.2022. After expiry of one year, they filed joint petition on 18.08.2023 together with application seeking waiver of cooling period. That application has been rejected on 19.09.2023. Further, perusal of the joint petition reveals, the parties further disclosed that their marriage was never consummated and that they have irreconcilable ideological differences which did not allow them to establish normal relationship. It has been further disclosed that all efforts have been made by family and friends to reconcile the difference between the parties. However, those have failed.

4. In absence of any dowry paid, it is also disclosed, the appellant has paid to the respondent Rs. 10 lakhs towards final settlement amount.

5. Though no mediation has taken place, both counsel for the parties vehemently urged, there is no room for settlement between the parties. All efforts made by the family and friends in that regard failed. Consequently, Rs. 10 lakhs were agreed to be paid to the respondent towards all her claim for alimony etc.

6. In view of the undisputed facts noted above, we find, no useful purpose may be served in making the parties to go through efforts of mediation inasmuch as both sides are equally clear, there is no hope of reconciliation as may allow normal matrimonial relationship.

7. In **Vijay Agarwal Vs. Smt. Suchita Bansal, 2023 (8) ADJ 484**, this Court has observed as under :

"4. The issue involved is no longer res integra. In Amardeep Singh Vs. Harveen Kaur (2017), 8 SCC 746, it was held 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."

5. That principle of law laid down by the Supreme Court has not been departed from, in any subsequent or other decision of that Court.

6. After considering the provisions of law, the Supreme Court had thus clarified that though the provision of Section 13B(2) postulates a cooling period of six months, that stipulation of time was not mandatory. Not only the provision stipulating six months' time period was held to be directory, further, the Supreme Court held that the discretion to waive that stipulation of time would vest in the Court dealing with the second motion petition. The intent of the decision of the Supreme Court and the interpretation of the law made by it are clear as daylight. Once the Supreme Court observed that the stipulation of time was directory and that the discretion to waive it may be exercised in the individual facts and circumstances of each case, by the Court, clearly, it had left no manner of doubt to arise with any party, less so the Court itself, as to who may exercise the discretion.

7. Insofar as the Supreme Court interpreted the statutory provision and laid down the law, that decision of the Supreme Court may never have been described as an exercise referable to Article 142 of the Constitution of India.

8. Article 142 of the Constitution of India enables the Supreme Court to do complete justice in the facts of any case. However, by very nature of that power, whenever exercised, that Court never seeks to lay down any proposition or principle of law. Here, to the contrary, the Supreme Court laid down the law in no uncertain terms. It took note of the statutory provision contained under Section 13B of the Act, 1955 and interpreted it to reach the conclusion that the same was directory and that the discretion to waive the stipulation of time would vest with the Court dealing with the second joint motion petition, seeking to dissolve the marriage between those parties."

8. In the present case, we find, the parties have lived separately for more than a year before filing the first motion petition. In the context of new marriage, the parties did not cohabit for more than one month. Their efforts to reconcile their differences though made privately i.e. with the help of friends and family,

also appear to have failed. At present, it appears, through dissolution of their marriage, the parties seek peace for themselves. There is no child born to the marriage and there are no other proceedings shown to be pending between them. Short counter affidavit filed by the respondent is a reflection of the fact assertion made in the appeal and the divorce petition. In such circumstances, on one hand, no useful purpose may ever be achieved in delaying the final outcome of the proceedings, at the same time, pendency of such proceeding may only prolong the agony of the parties.

9. For the reasons contained above, the present appeal is **allowed**. The order dated 19.09.2023 is set aside. The cooling period is waived. The parties are at liberty to proceed with second motion proceedings at the earliest. Subject to such compliance being made, the learned court below may make best effort to conclude the proceeding, as expeditiously as possible.

Order Date :- 28.11.2023

Abhilash

(Shiv Shanker Prasad, J.) (S. D. Singh, J.)