

Court No. - 39

Case :- FIRST APPEAL No. - 1231 of 2023

Appellant :- Mayur Rastogi

Respondent :- Smt. Rini Rastogi

Counsel for Appellant :- Himanshu Mishra

Counsel for Respondent :- Anees Baig

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri Himanshu Mishra, learned counsel for the appellant and Sri Anees Baig, 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 03.10.2023 passed by the learned Principal Judge, Family Court, Sambhal at Chandausi in Case No. 97 of 2023 (Smt. Rini Rastogi and Mayur Rastogi). By that order, the learned court below has dismissed the joint petition instituted by the parties under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act'). The learned court below has reached a conclusion that the proceedings are not maintainable.

3. As to reason to reach that conclusion, the learned court below has noted, the marriage between the parties took place on 28.01.2022 whereas they last cohabited on 05.02.2023 when they reached a settlement to dissolve their marriage. A joint petition having been filed on 27.02.2023, the same is described to be not maintainable.

4. 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."

5. Applying that rule 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."

6. In the present case, it is undisputed that the marriage between the parties took place on 28.01.2022. Parties separated on 23.02.2022. Computed from the date of separation, it is the

further case of the parties that they had filed joint petition to dissolve the marriage after one year on 27.02.2023.

7. Not only such facts were stated in the petition but also the appellant made categorical statement before the learned court below as below :

“मेरा विवाह दिनांक 28.01.2022 को हिन्दू रीति रिवाज के अनुसार रिनी रस्तोगी के साथ सम्पन्न हुआ था। आपसी मनमुटाव होने के कारण तथा वैचारिक मतभेद होने के कारण हममें विवाद रहने लगा और साथ रहना सम्भव नहीं रहा। मैं दिनांक 23.02.2022 से अपनी पत्नी से बिल्कुल अलग रह रहा हूँ। तब से आज तक हमारे बीच कोई पति पत्नी के सम्बन्ध नहीं बने हैं। मैंने अपनी पत्नी को एकमुश्त धनराशि 7 लाख 76 हजार रुपये प्राप्त करा दिये हैं। अब हमारा कोई भी लेनदेन शेष नहीं है तथा मैंने अपनी पत्नी का समस्त स्त्रीधन भी प्राप्त करा दिया है। भविष्य में हमारी एक साथ रहने की कोई सम्भावना नहीं है। मैं बिना किसी दबाव के बिना किसी षडयन्त्र से स्वस्थ मस्तिष्क से आपसी सहमति से तलाक चाहता हूँ।”

8. Thus, it has been submitted, not only the facts noted above were perverse but that relationship between the parties had reached a point of no return inasmuch as not only the parties stood firm on their decision to dissolve their marriage but that the respondent further disclosed to the Court that she had received Rs. 7,76,000/- towards permanent alimony etc. and that her stridhan had also been returned. Again, undisputedly, there are no children born from the marriage.

9. The above statement is not disputed to the respondent either before the learned court below or before this Court.

10. In any case, the reasoning given by the learned court below that the proceedings were not maintainable because they had been filed within one year from the date of cause of action that arose on 05.02.2023 (as disclosed by the appellant), is plainly perverse. The learned court below has itself recorded that the marriage between the parties took place on 28.01.2022 and that petition for divorce was filed on 27.02.2023 i.e. 13 months after the occurrence of the marriage.

11. Seen in that light, bar contained under Section 14 of the Act clearly not apply to the present facts. Accordingly, the order dated 03.10.2023 passed by the learned court below is wholly erroneous in law. The same is set aside. The proceedings before the learned court below are revived to their original number and status. The condition for grant of waiver of cooling of period to does not arise, in the present facts. Since six months period have already expired, the learned court below may proceed to allow the parties to file a second motion petition and thereafter deal with the same as expeditiously as possible without causing any undue delay.

12. With the aforesaid observation, present appeal is **allowed**.

Order Date :- 9.11.2023

Abhilash

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