

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12139 of 2023

Petitioner :- Rajveer

Respondent :- Reena @ Ragini

Counsel for Petitioner :- Saurabh Pathak

Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Saurabh Pathak, learned counsel for the petitioner and Sri Nitesh Chaturvedi, who has put in appearance on behalf of the sole respondent.
2. Present petition, under Article 227 of the Constitution of India, has been filed essentially to waive off the cooling period of 6 months in respect of Hindu matrimonial petition registered as HMA petition no.528 of 2023 (Ragini alias Reena and Rajvir Singh Vs. Sailan) registered under 13 (B) of Hindu Marriage Act, 1955.
3. Learned Counsel for the petitioner contends that the marriage of the petitioner and the respondent was solemnized on 29.6.2020 and soon after the marriage, the parties have been living separately for more than one year and have mutually agreed to seek dissolution of their marriage. Accordingly, they have preferred petition before the learned Principal Judge, Family Court, Auraiya, on 3.10.2023. An application has been moved for waiving off cooling period of 6 months as provided under Section 13 B (2) of the Hindu Marriage Act, which application is stated to be pending.
4. Learned Counsel for the petitioner submits that the divorce petition by mutual consent has been registered and the learned Principal Judge, Family Court, Auraiya, has passed an order on 3.10.2023 remitting the matter to the mediation centre fixing 4.12.2023 for attempting a reconciliation between the parties and the divorce petition itself has been fixed for 5.4.2024.
5. Learned Counsel for the petitioner submits that both the parties have expressed their intention to live separately and there is no possibility between the parties to come together and co-habit. The opposite party has also put in appearance through Sri Nitesh Chaturvedi, Advocate, and has filed a short-counter-affidavit, wherein the factum of living separately from the petitioner since

more than one year has been admitted and it has also been stated that there is no possibility to reconstitute mediation and co-habit in future and, therefore, it would be meaningless to prolong the case any further. Since the parties have expressed their unwillingness to co-habit together, in the opinion of the Court no useful purpose would be served by adjourning the divorce petition for the date fixed by the learned Principal Judge, Family Court, Auraiya.

6. It is settled law that cooling period as provided under Section 13 B (2) of Hindu Marriage Act is not mandatory but directory and can be waived off. The Apex Court in the case of **Amardeep Singh Vs. Harveen Kumar, (2017) 8 SCC 746**, has laid down the said proposition. In view of the law laid down by the Apex Court, this Court deems it appropriate to require the petitioner as well as respondent to appear before the learned Principal Judge, Family Court, Auraiya, on 5.12.2023 along with a certified copy of this order and the learned Principal Judge, Family Court, Auraiya, shall proceed to pass appropriate orders on the pending motion for waiving off the cooling period as provided under Section 13 B (2) in terms of the ratio of the Apex Court in the case Amardeep Singh (supra). If the learned Principal Judge, Family Court, finds that the conditions laid down by the Apex Court stands satisfied, it shall proceed to pass appropriate orders on the Divorce petition.

7. With the aforesaid observations, the petition is disposed of.

Order Date :- 30.11.2023

Irshad