

Court No. - 39

Case :- FIRST APPEAL No. - 1312 of 2023

Appellant :- Pankaj Chaubey

Respondent :- Shruti Chaubey

Counsel for Appellant :- Shailesh Kumar Shukla

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Sri Shailesh Kumar Shukla, learned counsel for the appellant and Sri Abhinav Tripathi, learned counsel for the respondent.
2. Present appeal is directed against the order dated 04.11.2023 passed by the learned Additional Principal Judge, Family Court No. 1, Varanasi in Case No. 1826 of 2023 (Shruti Chaubey Vs. Pankaj Chaubey). By that order, the learned court below has rejected the application filed by the parties, seeking waiver of cooling period of six months and to proceed with the second motion on the joint petition filed by them, seeking dissolution of their marriage 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 is undisputed, the parties solemnized their marriage on 21.11.2007. They disclose to have parted company in 2013. They further disclose to be living separately since then, without cohabitation. There is no issue born to them.
4. In the context of matrimonial discord that has arisen between the parties, it is further disclosed, upon intervention of friends and families, the parties have been able to resolve their differences such that by means of a written settlement reached between them, it was agreed, subject to the appellant paying to the respondent Rs. 13,00,000/-, they would dissolve their marriage and further withdraw from the criminal prosecution lodged by both parties against the other.
5. In the context of such compromise, it has been further disclosed, the same has been acted upon, inasmuch as the respondent has received full payment of Rs. 13,00,000/- from the appellant and the criminal cases lodged by both parties

against the other, have been quashed by this Court in Application U/S 482 No. 41497 of 2023 (Mahendra Prasad Pandey & 4 Ors. Vs. State of U.P. & Anr.), Neutral Citation No. - 2023:AHC:220818 and Application U/S 482 No. 42023 of 2023 (Pankaj Chaubey & 2 Ors. Vs. State of U.P. & 2 Ors.), Neutral Citation No. - 2023:AHC:222331.

6. 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."

7. At present, we find, the parties have not only agreed to dissolve their marriage but that such realisation has come to them after having suffered a long period of bitter relationship. Undoubtedly, they have been able to resolve their disputes and differences as both have withdrawn criminal cases lodged against the other such that all criminal prosecutions have been quashed. Money payment has also taken place towards full and final settlement thus reached. There are no children born to the marriage. Clearly, the parties seek a second opportunity in life. To that they are fully entitled.

8. While procedural safeguards exist to ensure, no party to a bad marriage is cheated or taken unfair advantage of, at the same time, the Court must remain cognizant that it is not the function of the Court to reject such waiver application as may only result in prolonging the agony of the parties. Here, the parties are

seen to have suffered much.

9. For the reasons contained above, the present appeal is **allowed**. The order dated 04.11.2023 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 with utmost expediency so as to conclude the proceeding, as expeditiously as possible, preferably within a period of ten days from today.

Order Date :- 4.12.2023

Abhilash

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