

Court No. - 44

Case :- MATTERS UNDER ARTICLE 227 No. - 12703 of 2023

Petitioner :- Lokesh Kumar

Respondent :- Smt. Hemlata

Counsel for Petitioner :- Rajesh Kumar

Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Rajesh Kumar, learned counsel for the petitioner and Shri Shyam Singh Sengar, who has put in appearance on behalf of the sole respondent and filed Vakalatnama, which is taken on record.

2. Present petition, under Article 227 of the Constitution of India, has been filed for a direction to Principal Judge, Family Court, Kasganj to decide the Divorce Petition No. 516 of 2023 (Smt. Hemlata versus Lokesh Kumar) under Section 13-B of the Hindu Marriage Act, within the time frame fixed by this Court.

3. Learned Counsel for the petitioner contends that the marriage of the petitioner and the respondent was solemnized on 15.5.2021 as per Hindu rituals and rites. Learned counsel for the petitioner submits that soon after marriage dispute arose between the parties and their family persons and they are living separately from each other since 18.10.2021. Thereafter, respondent filed a criminal case against the petitioner and his family members and petitioner has challenged the same before this Court in criminal proceedings and the matter was referred to Mediation Centre. Both the parties appeared before the Mediation Centre of this Court and arrived on an interim settlement. Thereafter, both the parties appeared before the Principal Judge, Family Court and filed divorce petition under Section 13 B of the Hindu Marriage Act. Learned counsel for the petitioner submits that divorce petition was heard by the Principal Judge, Family Court, Kasganj on 7.11.2023 and thereafter fixed the matter for 9.5.2024. Learned counsel for the petitioner submits that parties in this case are praying waiving the "cooling-off" period since there is no hope for any reconciliation.

4. Learned counsel appearing for both the parties submit 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.

5. I have heard learned counsel for the parties and have perused the record.

6. 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, Kasganj.

7. 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, Kasganj, on 22.12.2023 with an application for waving off the "Cooling Period" along with a certified copy of this order and in furtherance the learned Principal Judge, Family Court, Kasganj, shall proceed to pass appropriate orders on the said application 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.

8. With the aforesaid observations, the petition is ***disposed of***.

Order Date :- 12.12.2023

Ravi Prakash

(Ashutosh Srivastava, J.)