

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 6307 of 2023

Petitioner :- Avinash Kumar Singh

Respondent :- Principal Judge, Family Court, Lko. Another

Counsel for Petitioner :- Vinay Kumar Tiwari

Hon'ble Rajnish Kumar,J.

1. Sri Vinay Kumar Tiwari learned counsel for the petitioner, while assailing the order dated 02.11.2023 passed in Case no.2803 of 2023 (Sanjukta Singh vs Avinash Kumar Singh) in a petition filed by the petitioner with respondent no.2 under Section 13B of the Hindu Marriage Act for divorce by mutual consent submits that the application has been rejected without considering the judgment of the Hon'ble Supreme Court in the case of Amardeep Singh vs Harveen Kaur (Civil Appeal no.11158 of 2017), in which the Hon'ble Supreme Court has observed in para-14 that if the Court is satisfied that the parties are living separately for more than the statutory period and all efforts at mediation and reconciliation have been tried and have failed and there is no chance of reconciliation and further waiting period will only prolong their agony. He further submits that a coordinate Bench of this Court, in the case of Smt. Poonam Arora vs Amit Arora; Matter under Article 227 no.11368 of 2023, considering the aforesaid judgment of Hon'ble the Supreme Court has allowed the petition by means of the order dated 28.11.2023 and directed the parties to appear before the concerned Principal Judge.

2. The observation in para-14 is only regarding satisfaction of the Court, whereas in para-18 of the said judgment, the Hon'ble Supreme Court has held 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 four points given thereafter. Para-18 is extracted herein-in-below:-

"18. 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 13B\(2\)](#), 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 XXXIIA 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."

3. As admitted by learned counsel for the petitioner, the parties had married on 09.05.2015 and they are living separately since 13.07.2022, therefore, the statutory period of one year of separation of parties under Section 13B(1) and the period of six months under Section 13B(2) has not passed in terms of the para-18(i) of the aforesaid directions of the Hon'ble Supreme Court, therefore, even if the concerned court has jurisdiction to waive off the cooling period but not at this stage. Therefore, this Court does not find any illegality or error in the impugned order. Even otherwise, it appears that the aforesaid judgment of the Hon'ble Supreme Court has not been placed before the concerned Court. The petitioner is also not entitled for any benefit of the aforesaid order of co-ordinate Bench because it has been passed without considering aforesaid para-18 of the judgment of Hon'ble Supreme Court in the case of Amardeep Singh vs Harveen Kaur.

4. At this stage, learned counsel for the petitioner submits that the petition may be dismissed as not pressed with liberty to move an appropriate application in terms of the direction issued by the Hon'ble Supreme Court at appropriate stage.

5. **Dismissed**, accordingly, as not pressed with liberty as aforesaid.

(Rajnish Kumar,J.)

Order Date :- 18.12.2023

Harshita