

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.7358 of 2016

Date of Decision:16.12.2016

Jasmeen Kaur

.....Petitioner

Versus

Harmanpreet Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Randhawa, Advocate
for the petitioner.

Mr. Amanjot Singh Sindhu, Advocate
for respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 21.10.2016 passed by Additional District Judge, Jalandhar whereby application jointly filed by the parties for exemption/waiving of six months statutory period for divorce under Section 13-B of Hindu Marriage Act was dismissed.

[2]. Both the parties filed a petition under Section 13-B of The Hindu Marriage Act for mutual divorce on the ground that parties were living separately from 25.04.2015 and the marriage was irretrievably broken down. Efforts for reconciliation also failed. Ultimately, both the parties decided to seek divorce on mutual consent. First motion was recorded and the case was adjourned to 18.03.2017 for second motion.

[3]. Petitioner alleged that an offer of admission granted to her and her course was started from 01.12.2016. Keeping in view the urgency, exemption in respect of statutory period of six months for mutual divorce under Section 13-B of Hindu Marriage Act was sought.

[4]. Learned counsel for the petitioner by referring to **Mittal Ramesh Panchal Vs. None, 2014 AIR (Bombay) 80, Veerendra Singh Rajak Vs. Smt. Seema Rajak, 2015 AIR (M.P) 100, Amarjit Kaur Vs. Bhupinder Singh, 2007(1) RCR (Civil) 834, Vijay Kumar Vs. Smt. Surinder Kaur @ Sunita, 2008(1) RCR (Civil) 704, Shirish Pathak Vs. Smt. Ridhima, 2015(3) MPWN 86, Nilamben Bharat Kumar Patel Vs. Bharat Kumar Dahyabhai Patel, 2016 AIR (Gujarat) 19, Hapreet Singh Popli and others Vs. Manmeet Kaur Popli and another, 2010(1) RCR (Civil) 644 and Kunal Sudhir Sangani Vs. Ishita Sangani, 2015(2) RCR (Civil) 278** contended that when the marriage was broken down irretrievably, there was no purpose for keeping the parties under bond for further six months. The maturity and comprehension of the parties were required to be appreciated for allowing them to have future course of action in their life after divorcing each other. The understanding between the parties was free from any coercion, intimidation and undue influence. There was no possibility of

any reconciliation. Duration of marriage was such that there was total lack of frivolity and continuation of marriage would be having deleterious effect and the prospects of further marriage of the parties would be adversely affected.

[5]. Learned counsel further contended that the statutory period of six months provided under Section 13-B(2) of Hindu Marriage Act has been provided with a specific intent that the possibility of last minute reconciliation can be worked out so as to save the marriage. In the mechanism of dispensation of justice, the Courts are expected to do justice between the parties by ignoring technical flows. Though waiver of statutory period has not been specifically provided, but the same can be read in provisions as the main object of provision is to liberalize divorce. The provision cannot be read in rigid manner so as to make it ineffective and meaningless. The provision was never intended to be applied in stereotype manner irrespective of the fact that the marriage has been irretrievably broken down and there are no chances of reconciliation between the parties.

[6]. I have considered the submissions made by learned counsel for the petitioner.

[7]. In **Manish Goel Vs. Rohni Goel, 2010(2) RCR (Civil) 194**, the Hon'ble Apex Court has held that there is no vested rights of the parties to approach the Court for exercise of such a

vast discretion, however such a course can be resorted to when the Apex Court feels that it is so warranted to eradicate injustice. The power under Article 136 of Constitution of India has to be exercised towards question of law having general public importance or a decision which shocks the conscience of the Court. Controversy in terms of Article 136 of Constitution of India cannot be invoked to circumvent any legal procedure provided in overriding power. Ultimately, the Hon'ble Apex Court held that under Article 142 of Constitution of India, the Apex Court cannot pass an order which is totally inconsistent. It is only the Apex Court which can waive off the period in question and no other Court has any competence to issue a direction contrary to law, nor the Court direct an authority to act in contravention of the statutory provisions. An order of waiving of statutory requirements can be passed only by the Supreme Court in exercise of its power under Article 142 of Constitution of India and the said power is not vested with any other Court.

[8]. In **Niti Arora Vs. Rohit Vij, 2009 (2) RCR (Civil) 457**, the matter has already been referred to Larger Bench of Hon'ble Apex Court for clear adjudication for the purpose of future guidance. Reference has not been answered so far. As on date, directions issued by the Hon'ble Apex Court in **Manish Goel Vs. Rohni Goel's case (supra)** are still in force. The precedents

cited by learned counsel for the petitioner are of different High Courts. The ratio of **Manish Goel Vs. Rohni Goel's case** (**supra**) was not relied or discussed in the judgments cited by learned counsel for the petitioner.

[9]. In **Kunal Sudhir Sangani's case** (**supra**), the Hon'ble Apex Court itself considered the feasibility of waiving the period and directed the parties to file a petition for waiver of the statutory period before the trial Court and then, the trial Court shall waive the period and pass an order in terms of settlement. In the aforesaid case, it was the Hon'ble Apex Court at whose instance the case was directed to be filed before the trial Court for the relief in question.

[10]. In view of pendency of reference to the Larger Bench of Hon'ble Apex Court, I do not see any ground for granting indulgence at this stage. Accordingly, this revision petition is dismissed.

16.12.2016

*Prince***(RAJ MOHAN SINGH)
JUDGE****Whether Reasoned/Speaking****Yes/No****Whether Reportable****Yes/No**