

292

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5488 of 2017

Date of Decision : 18.09.2017

RAJBIR SINGH

...PETITIONER

VERSUS

SUSHMA

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Pratham Sethi, Advocate for the petitioner.

Mr. Gurcharan Singh Gandhi, Advocate for the respondent.

RAMESHWAR SINGH MALIK, JUDGE (ORAL)

Feeling aggrieved against the alleged long pendency of a petition under Section 13 (B) of the Hindu Marriage Act, 1955, ('the Act' of short) for dissolution of marriage by way of mutual consent, petitioner-husband has approached this Court by way of instant civil revision petition under Article 227 of the Constitution of India, seeking a direction to the learned Family Court to decide the petition for divorce by mutual consent expeditiously.

When the case came up for hearing on 21.08.2017, following order was passed by this Court:-

“Learned senior counsel for the petitioner places reliance on the provisions contained in Section 21B of the Hindu Marriage Act, 1955, ('the Act' for short), reproduced at page 4 and 5 of the paper book, to contend, inter alia, that the learned family court miserably failed to exercise its jurisdiction, altogether ignoring the laudable object of early disposal of petition filed under Section 21B of the Act, while

passing the impugned order, thereby causing manifest injustice to the petitioner. He further submits that parties were also present but the learned family court neither recorded their presence, nor their statements and that too, without disclosing any reasons.

Notice of motion for 30.8.2017.

Process dasti as well as through the counsel of respondent before the learned court below.

In the meantime, office is directed to seek report from the learned family court, as to why and under what circumstances, impugned order dated 30.5.2017 came to be passed ignoring the mandatory provisions contained under Section 21-B of the Act.”

Thereafter, the case came up for hearing on 30.08.2017 and following order was passed:-

“In compliance of the previous order dated 21.08.2017, a report from the learned Family Court has not been received. List on 11.09.2017.

Office is directed to ensure report from the learned Family Court positively before the next date of hearing.”

After receipt of report from the learned Matrimonial Court, following order was passed by this Court on 11.09.2017:-

“Report from the learned Court below has been received. However, learned proxy counsel seeks short accommodation on the ground that the learned arguing counsel for the petitioner is in personal difficulty.

On her request, adjourned to 18.09.2017.”

Reply, filed on behalf of the respondent, although not at all required, has been taken on record because the learned counsel for the respondent insisted for taking it on record.

Heard learned counsel for the parties.

At the very outset, it is made clear that no other averment taken or allegation levelled by the petitioner are being taken into consideration except the grievance raised by him qua long pendency of the petition under Section 13 (B) of the Act, with a particular reference to the order dated 30.05.2017, whereby the learned Family Court has adjourned the case to 02.11.2017, despite availability of the petitioner along with requisite amount, which was supposed to be paid by him to the respondent, on 30.05.2017 itself. Petitioner got prepared a demand draft dated 26.05.2017 (Annexure P-7) for an amount of Rs.5,50,000/- in the name of the respondent.

Learned counsel for the petitioner has also pointed out that the remaining amount of Rs.1,00,000/- was being carried by the petitioner in cash on 30.05.2017 because he was supposed to pay an amount of Rs.6,50,000/- to the respondent towards full and final settlement. However, contentions raised by learned counsel for the petitioner are opposed by the learned counsel for the respondent, contending that since the petitioner was not having sufficient amount with him on 30.05.2017, a request for adjournment was made by both the parties and the case was adjourned to 02.11.2017.

Be that as it may, learned Family Court miserably failed to record its reasons keeping in view the mandatory provision of law contained under Section 21(B) of the Act. Relevant provisions contained in sub Sections (1) and (2) of Section 21 (B) of the Act, which are relevant for the decision of instant petition, read as under:-

“Section 21(B) Special provision relating to trial and disposal of petitions under the Act.

1. *The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.*
2. *Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of petition on the respondent.”*

A perusal of the report received from the learned Family Court vide communication dated 30.08.2017, available on the file of this case, would make it crystal clear that the learned Family Court did not refer to the abovesaid mandatory provisions of law. The learned Court below cannot be expected to be ignorant about the abovesaid mandatory provisions of law contained under Section 21(B) of the Act.

Legislative intent is crystal clear from bare perusal of the provisions contained under Section 21(B) of the Act. However, reasons which were supposed to be recorded by the learned Family Court are conspicuously missing in the order dated 30.05.2017.

Further, once the petitioner has got prepared the demand draft on 26.05.2017 for an amount of Rs.5,50,000/- in the name of the respondent-wife, it does not appeal to reason as to why the learned Family Court passed the order dated 30.05.2017. In fact, the order has been passed only because of the casual approach adopted which clearly runs counter to the legislative intent and the object sought to be achieved by the mandatory provisions of law contained in Section 21(B) of the

It is pertinent to refer to the recent judgment of the Hon'ble Supreme Court in Civil Appeal No.11158 of 2017 arising out of SLP (Civil) No.20184 of 2017 (Amardeep Singh v/s Harveen Kaur) decided on 12.9.2017, holding that the minimum period of six months stipulated under Section 13 B(2) of the Act is not mandatory but directory and the same can be waived of by the learned Family Court for the second motion, if the fact situation in a given case so requires.

Exercising judicial restraint and without commenting any further, the learned Family Court is directed to ensure early decision of the petition under Section 13(B) of the Act. Petitioner shall be at liberty to move an application for preponement of date of hearing. Learned counsel for the respondent has fairly stated that if such an application for preponement is moved, it shall not be opposed by the respondent. If any application for preponement of the date of hearing is moved by the petitioner within a period of one week from today, the same shall be allowed by the learned Court below and the proceedings of second motion shall be taken immediately, deciding the petition under Section 13 (B) of the Act without any further delay.

With the abovesaid observations made and directions issued, the instant revision petition is allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

September 18, 2017

rajneesh

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No