

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 8215 of 2017 (O & M)
Date of Decision: 30.11.2017

Ajay Kumar

.....Petitioner

v.

Anita

.....Respondent

CORAM HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present:- Mr. J.S. Thind, Advocate, for the petitioner

Mr. Rahul Deswal, Advocate, for the respondent

SHEKHER DHAWAN, J.

Present Civil Revision has been entrusted to this Court vide order of the Hon'ble Chief Justice, as the connected Criminal Revision bearing CRR No. 1444 of 2013 is pending before this Court.

Present revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 23.10.2017, passed by the learned District Judge, Sirsa in Case No. 508-CIS/2017, vide which condition of 6 months was put in petition filed under Section 13B of the Hindu Marriage Act, 1955 (for short “the Act”).

Learned counsel for the parties have taken the plea that the marriage between the parties was solemnized on 19.9.1999 and both the parties are living separately since 2010. There is no likelihood of rehabilitating the husband and wife and as such, the period of 6 months under Section 13 B (2) of the Act be waived off. Reliance has been placed

on a judgment of the Supreme Court in the case of **Amardeep Singh v. Harveen Kaur**, Civil Appeal No. 11158 of 2017 in SLP (Civil) No. 20184 of 2017, decided on 12.9.2017, wherein Hon'ble Apex Court has laid down the following guidelines to consider the request for waiving off the period of 6 months as required under Section 13B (2) of the Act :-

“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.

Hon'ble Apex Court further observed as under :-

“21. 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.”

In the present case, the parties have solemnized marriage on

19.9.1999 and now both are living separately since 2010 and there is no

likelihood of rehabilitation. The parties have mutually settled their matrimonial dispute and all the connected criminal proceedings are being disposed of simultaneously, this Court is of the considered view that there is no possibility of the parties resuming co-habitation and there are chances of alternative rehabilitation, the parties are at liberty to approach the Court below, which shall consider the matter and pass fresh order in the light of above observations.

Disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

30.11.2017
Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No