



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.194 of 2018

1.Arulmozhi

2.S.Soma Selvakumar

... Petitioners / Petitioners

Vs.

NIL

... Respondent / Respondent

PRAYER:- Petition filed under Article 227 of the Constitution of India, praying to direct the learned Family Judge, Madurai, to dispose of the H.M.O.P.No.841 of 2017.

For Petitioners : Mr.N.Madhava Govindan

ORDER

This Civil Revision Petition has been filed seeking a direction to the Family Court, Madurai for early disposal of the proceedings in H.M.O.P.No.841 of 2017.

2. The facts of the case, as averred in the affidavit filed in support of the petition, are as follows:

2.1. The petitioners herein are couples and their marriage was solemnized on 23.02.2015 at Chellam Gurusamy Samuthayakoodam, near Theppakulam, Madurai. Due to differences of opinion between them, both are living separately for the past two years and there are no issues. Both the parties have entered into an amicable settlement and based on the compromise, the criminal case in C.C.No.72 of 2016 was quashed. The D.V.C., case was also not pressed.

2.2. Narrating all these facts, they had filed a petition under Section 13-B of the Hindu Marriage Act, 1955, in H.M.O.P.No.841 of 2017, seeking to dissolve the marriage solemnized between them and Family Court has fixed the next hearing date of the said H.M.O.P., as 08.05.2018, since, according to the Act, minimum "cooling off" period of six months has to be given.

2.3. As both the parties have to take care of their carrier and the first petitioner is going to Abroad, they had jointly filed two petitions before the Family Court to advance the date of hearing from 08.05.2018 to 18.01.2018 or any other date as

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3.1. The learned Counsel for the petitioners would strongly contend that the Family Court ought to have seen that by consent of both the parties, they had filed the petitions to advance the hearing date, by waiving off the six months cooling period, because they have to move on into their professional life.

3.3. In support of his contention, the learned Counsel for the petitioners placed reliance on the judgment of this Court in the case of P.Lydia Jenifar vs. S.Rajadurai in C.M.A.(MD)No.395 of 2017 (Decided on 20.09.2017), wherein, this Court, after a detailed and elaborate observation, has granted divorce to the parties therein.

4. Heard the learned Counsel for the petitioners and perused the documents placed on record.

6. In a recent judgment reported in (2017) 8 SCC 746, Amtesh Singh Vs. Harveen Kaur, the Hon'ble Supreme Court has ordered that the Court dealing with the matter can waive the statutory period under Section 13B(2) of the Hindu Marriage Act,



after considering certain parameters. The relevant portions of the said judgment worth reproduction for disposal of the case on hand:-

''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.

19. The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver.

20. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court.

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.

22. Needless to say that in conducting such proceedings the Court can also use the medium of video conferencing and also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reason as may satisfy the Court, to advance the interest of justice.

23. The parties are now at liberty to move the concerned court for fresh consideration in the light of this order.''

7. In the present case on hand, both the parties have jointly filed H.M.O.P., seeking divorce on mutual consent, which itself shows that there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation, since, for the past two years, they are not living together and all the efforts made by their elders, for amicable settlement, have been made in vain. Moreover, based on the compromise, the criminal case has been quashed and the D.V.C., case was also not pressed.



8. This Court in the case of P.Lydia Jenifar vs. S.Rajadurai in C.M.A.(MD)No.395 of 2017 (Decided on 20.09.2017), relying upon ample number of judgments, has given a categorical finding that granting divorce to a couple, after considerable period of time, is nothing but operation success but patient died and has held as follows:

"..13. In the recent verdict, the Apex Court, has held in the case of Amardeep Singh Versus Harveen Kaur (Civil Appeal No.11158 of 2017), the Supreme Court waived the six-month 'waiting period' once compulsory for mutual consent divorce. This was definitely give a solace for mutual divorce couple, because, some times, the matrimonial case consumes minimum two to twelve years."

9. In view of the foregoing discussions, this Court, hereby, directs the petitioners to appear before the Family Court, Madurai within a period of one week from the date of receipt of a copy of this order and the learned Judge, Family Court, Madurai is directed to proceed with the divorce petition in H.M.O.P.No.841 of 2017, strictly taking into consideration the parameters stated in the above judgment of the Apex Court and dispose of the H.M.O.P., petition within a period of one month thereafter, so as to enable the parties for alternative rehabilitation, both in their personal and professional life.

10. This Civil Revision Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Family Judge,
Madurai.

+1cc to Mr.N.Madhava Govindan, Advocate, sr no.45120

C.R.P(MD) .No.194 of 2018
31.01.2018

gk

JM/SV MMS/SAR 1/02.02.2018/4P/3C