



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD) .No.333 of 2018

A.Vaigundamani

... Petitioner/1st Petitioner**Vs.**

R.Anandhi

... Respondent / 2nd Petitioner

PRAYER:- Petition filed under Article 227 of the Constitution of India, praying to direct the Principal Sub Court, Nagercoil to take on file the unnumbered H.M.O.P.No.-- of 2017 on the file of Principal Sub Court, Nagercoil and to decide the same on merits, in accordance with law, within the time frame as fixed by this Court.

For Petitioner : Mr.J.Pooventherarajan
For Respondent : Mr.R.Ponkarthikeyan

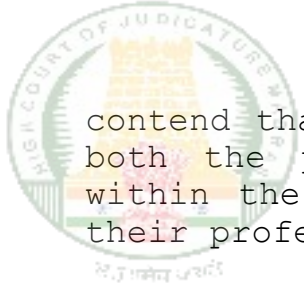
ORDER

This Civil Revision Petition has been filed seeking a direction to the Principal Sub Court, Nagercoil, to number the unnumbered H.M.O.P.No.--of 2017 and for early disposal of the same.

2. The facts of the case are that the parties herein are couples and their marriage was solemnized on 10.09.2017 at Ambujam Kannan Marriage Hall, Koyyanvilai, Kanyakumari District. Due to differences of opinion between them, both are living separately right from October 2017, i.e., within a period of one month from the date of marriage and there are no issues. As all the efforts made by the elders to reunite the couple ended in vein, they had filed a petition under Section 13-B of the Hindu Marriage Act, 1955, in unnumbered H.M.O.P.No.-- of 2017, seeking to dissolve the marriage solemnized between them, along with two applications - one under Section 14(1) of the Hindu Marriage Act, 1955, seeking leave to file the HMOP within the completion of one year; and the other to dispense with the provisions of Section 13B(2) of Hindu Marriage Act, 1955. The said petitions were returned by the Court below, without numbering, since one year period has not yet lapsed. Hence, the parties are before this Court for the aforesaid relief.

<https://hcservices.courts.gov.in/hcservices/>

3. The learned Counsel for the petitioner would strongly



contend that the Court below ought to have seen that by consent of both the parties, they had filed the petition seeking divorce, within the period of one year, because they have to move on into their professional as well as personal life.

4. The learned Counsel for the respondent would contend that time is an important factor for the respondent, being a womenfolk, to go for a better marital life, if she decide so. Each and every day delay for them would affect their future marital life, by which, the problem would be more complicated for the womenfolk.

5. In support of their contention, the learned Counsel for both the parties 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.

6. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

7. Perusal of record shows that marriage between the parties had taken place on 10.09.2017 and from the day of marriage, both of them were not interested with each other and they lived as husband and wife only for a few days without any cohabitation and thereafter, they are living separately. It is also averred that in spite of several mediations between the parties for reunion, it was not successful.

8. In a recent judgment reported in **(2017) 8 SCC 746, Amardeep 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.''

9. 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 and all the efforts made by their elders, for amicable settlement, have ended in vain.

10. 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."

11. In view of the foregoing discussions, this Court, hereby, directs the learned Judge to number the H.M.O.P., petition and if there is no possibility of reunion, he has to proceed with the case and dispose of the same, taking into consideration the parameters stated in the above judgment of the Hon'ble Apex Court, within a period of three months from the date of receipt of a copy of this order, so as to enable the parties for alternative rehabilitation, both in their personal and professional life.



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

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Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge,
Nagercoil.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)
(to return the original papers)

+ 1 CC TO Mr.J.POOVENDRARAJAN, ADVOCATE IN SR No. 54422

GK

TE/KKR/SAR-1 : 23/03/2018 : 4P/4C

C.R.P (MD) .No.333 of 2018
12.03.2018