



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.04.2018

DELIVERED ON : 23.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) Nos.931 and 932 of 2018

C.R.P. (MD) (PD) No.931 of 2018:

Thenappan @ Saravanan

... Petitioner/Petitioner No.1
vs

Muthupriya

.. Respondent/Petitioner No.2

C.R.P. (MD) (PD) No.932 of 2018

Azhagumeenal

... Petitioner/Petitioner No.1
vs

Murugappan

.. Respondent/Petitioner No.2

Civil Revision Petition No.931 of 2018 filed under Article 227 of Constitution of India to direct the Sub-Court, Pudukottai to dispose of H.M.O.P.No.295 of 2017 on the file of the Sub-Court, Pudukottai as expeditiously within the time frame that the Hon'ble Court may deems fit in the nature and exigency of the case.

Civil Revision Petition No.932 of 2018 filed under Article 227 of Constitution of India to direct the Sub-Court, Pudukottai to dispose of H.M.O.P.No.70 of 2018 on the file of the Sub-Court, Pudukottai as expeditiously within the time frame that the Hon'ble Court may deems fit in the nature and exigency of the case.

For Petitioners : Mr.G.Mathavan
(in both Petitions)

COMMON ORDER

Heard the learned counsel for the petitioners and perused the materials available on record.

2. These Civil Revision Petitions have been filed by the petitioners seeking direction on the Subordinate Judge, Pudukottai to dispose of H.M.O.P.Nos.295 of 2017 and 70 of 2018 respectively pending on its file expeditiously.



3. Since the issue involved in both the Civil Revision Petitions is one and the same, both the Civil Revision Petitions were heard together and disposed of by this common order.

4. According to the petitioner in H.M.O.P.No.295 of 2017, the marriage between the petitioner and the respondent took place on 15.9.2016 and they lived together for only one day. Thereafter, due to difference of opinion, the respondent went to her parental house and now more than a year, both of them were living separately. According to the petitioner, there was no issue out of the marriage. Despite several attempts made by the elders for re-union, the same ended in vein and there was no possibility of re-union. According to the petitioner, both are well educated and they were aware about to choose their life. Since there was no possibility of re-union and in order to get divorce on mutual consent, they filed the O.P., which was taken on file on 6.11.2017 and was adjourned to 07.6.2018.

5. The case of the petitioner in C.R.P.No.932 of 2018 is that the marriage between the petitioner and the respondent was solemnized on 04.12.2016. After the marriage, they lived together for one week and thereafter, due to difference of opinion, the petitioner went to her parental house. Now, more than a year, both the petitioner and the respondent were living separately and there was no issue out of the marriage. Despite attempts made by the elders of the family, there was no possibility of re-union. Hence, they constrained to file O.P. mutually for divorce. According to the petitioner, the O.P. was taken on file on 26.2.2018 and the same was adjourned to 28.8.2018.

6. The common grievance of the petitioners is that the learned Subordinate Judge failed to consider the statutory period of six months specified in Section 13-B(2) of the Hindu Marriage Act, in addition to the statutory period of one year under section 13-B(1) was over before the first motion itself. According to the petitioners, the learned Subordinate Judge failed to consider the decision in Amardeep Singh v. Harveen Kaur, reported in (2017) 8 SCC 746, wherein the Hon'ble Supreme Court held that the period mentioned in Section 13-B(2) is not mandatory, but directory and it will open to the Court to exercise its discretion in the facts and circumstances of each case where there was no possibility of parties resuming cohabitation and there were chances of alternative rehabilitation.

7. According to the learned counsel for the petitioners, in these case on hand, there was no question of re-union between the petitioner and the respondent respectively and both of them have filed petitions for divorce on mutual consent.

8. From the averments set out in the petitions, it is clear that both the petitioner and the respondent respectively were not interested with each other and they lived as husband and wife only for a few days without any cohabitation. It is also stated in the petitions that the parties have agreed not to claim any maintenance from each other.



9. Learned counsel for the petitioners submitted that despite several mediations between the parties of both families and elders of the village for reunion, it was not successful. Hence, the petitioners have filed petitions for mutual divorce before the Sub-Court, Pudukottai.

10. Though Section 13-B of the Hindu Marriage Act contemplates that the petitioner should live separately for a period of one year or more in addition to the cooling period of six months, in a recent decision in *Amardeep Singh v. Harveen Kaur*, reported in (2017) 8 SCC 746, the Hon'ble Supreme Court has ordered that the Court dealing with the matter can waive the statutory period under Section 13-B(2) of the Hindu Marriage Act, after considering certain parameters. In the said decision, the Hon'ble Supreme Court held:

'19. 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 13-B(2), it can do so after considering the following:

- (i) the statutory period of six months specified in Section 13-B(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.

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

20. Since we are of the view that the period mentioned in Section 13-B(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.

21. 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.

22. The parties are now at liberty to move the concerned court for fresh consideration in the light of this order. The appeal is disposed of accordingly"

WEB COPY

11. On a perusal of the records, it is seen that from the date of marriage, both the petitioner and the respondent respectively were not interested with each other and they lived as husband and wife only for few days without any cohabitation. The petitioner in C.R.P.No.932 of 2018 and the respondent in C.R.P.No.931 of 2018 have left the matrimonial home by taking all their jewels and belongings which were presented to them at the time of marriage and are living with their parental home. They also agreed not to claim any maintenance from other party in future. It is also averred that inspite of several mediations between the parties for reunion, it was not successful. Hence, the parties have jointly filed H.M.O.P. for mutual divorce.

12. Since the Hon'ble Supreme Court in Amardeep Singh v. Harveen Kaur, supra has held that the period mentioned in Section 13-B(2) is not mandatory but directory, the learned Subordinate Judge, Pudukottai is directed to proceed with the case strictly taking into consideration the parameters stated in Amardeep Singh v. Harveen Kaur, supra for waiving of statutory period under Section 13-B(2) of the Hindu Marriage Act, and then pass orders in accordance with law within a period of two weeks from the date of receipt of a copy of this order.

13. With the above direction, the Civil Revision Petitions are allowed. No costs.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Subordinate Judge,
Pudukottai.

order made in
C.R.P. (MD) (PD) Nos.931 and 932 of 2018
23.08.2018

VSV

JM/SKN RSK/SAR 4/31.08.2018/4P/2C