



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2018

(Reserved on 14.12.2017)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

CRP(PD) (MD) No.2427 of 2017

1) M.Selvakumar

2) R.Mangaleswari

... Petitioners

vs.

NIL

... Respondent

Petition filed under Article 227 of the Constitution of India, to set aside the order passed in unnumbered I.A.No. of 2017 in unnumbered HMOP.No. of 2017 dated 30.11.2017 by the Honourable Family Judge, Madurai.

For Petitioners : Ms.Porkodi Karnan for
M/s.Polax Legal Solutions

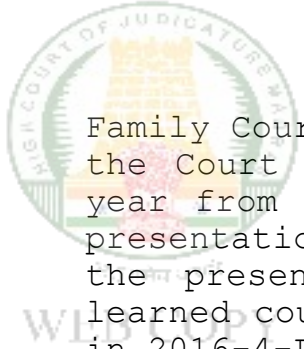
ORDER

This Civil Revision Petition has been filed against the order passed in unnumbered I.A.No. of 2017 in unnumbered HMOP.No. of 2017 dated 30.11.2017 by the Family Court, Madurai.

2.Learned counsel for the petitioners would submit that the marriage between the petitioners had taken place on 06.09.2017 at K.G.S. Mahal, Sathiya Sai Nagar, Madurai-3, as per the Hindu rites and customs. At the time of marriage, the grandparents of the 2nd petitioner presented 20 sovereigns of gold jewels to her as stridhanam and the 1st petitioner spent Rs.2,00,000/- towards marriage expenses.

3.It is further submitted that from the day of marriage, both the petitioners were not interested with each other and they lived as husband and wife only for five days without any cohabitation and 2nd petitioner had left the matrimonial home by taking all her jewels and belongings which were presented to her at the time of marriage and is living with her grandparents at Reserve Line Madurai. It is also agreed by the petitioners not to claim any maintenance from other party in future.

4.Learned counsel for the petitioner further submitted that in spite of several mediations between the parties of both families for reunion, it was not successful. Hence, the petitioners have filed a petition for mutual divorce before the Family Court, Madurai and the Family Court returned the HMOP, stating that the essential ingredient to file petition under Section 13B of the Hindu Marriage Act is the petitioners should live separately for a period of one year or more and therefore, the petitioners ought not to have filed this petition since they are not living separately atleast for one year as required under Section 13B of the Act. So saying, the



Family Court returned the HMOP with a direction to explain as to how the Court can take the petition on file before the expiry of one year from the date of marriage and granted one month time for representation. Against the said order, the petitioners have filed the present revision petition. In support of her contention, learned counsel for the petitioners relied on the judgment reported in 2016-4-L.W 287, Meenal vs. Sedhu.

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

6. Though Section 13B of the Hindu Marriage Act contemplates that the petitioners should live separately for a period of one year or more in addition to the cooling period of six months, in a recent judgment reported in (2017) 8 SCC 746, Amardeep Singh Versus 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. Perusal of record shows that marriage between the petitioners had taken place on 06.09.2017 and from the day of marriage, both of them were not interested with each other and they lived as husband and wife only for five days without any cohabitation and 2nd petitioner had left the matrimonial home by taking all her jewels and belongings which were presented to her at the time of marriage and is living with her grandparents. They also agreed not to claim any maintenance from other party in future. It is also averred that in spite of several mediations between the parties for reunion, it was not successful. Hence, the petitioners have jointly filed HMOP for mutual divorce.

8. Since the Hon'ble Apex Court in the judgment reported in (2017) 8 SCC 746, has held that the period mentioned in Section 13B (2) is not mandatory but directory, the impugned order passed in unnumbered I.A.No. of 2017 in unnumbered HMOP.No. of 2017 dated 30.11.2017 by the learned Judge, Family Court, Madurai, is aside. From the averments made in HMOP, it appears that there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation and therefore, the learned Judge, Family Court, Madurai, is directed to number the HMOP forthwith and proceed with the case strictly taking into consideration the parameters stated in the above judgment of the Apex Court, for waiving of statutory period under Section 13B(2) of the Hindu Marriage Act, and then pass orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To
The Judge, Family Court, Madurai.

+1CC to M/s. Polax Legal Solutions., Advocate, SR.No. 44909

order made in
CRP(PD) (MD) No. 2427 of 2017
29.01.2018