



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.2655 of 2018

1.Raji @ Jasmine Raji
2.Yenoj Jebaraj

... Petitioners

Vs.

NIL

... Respondent

PRAYER:- Petition filed under Article 227 of the Constitution of India, praying to direct the Principal District Court, Theni, to number the unnumbered I.D.O.P.No.-- of 2018 in SR.No.4372, presented on 01.08.2018, returned on 02.08.2018 and to decide the same on merits, in accordance with law.

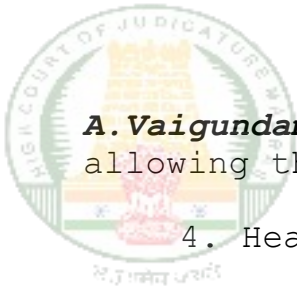
For Petitioners : Mr.D.Venkatesh

ORDER

This Civil Revision Petition has been filed seeking a direction to the learned Principal District Judge, Theni, to number the unnumbered I.D.O.P.No.--of 2018 and to decide the same on merits.

2. The facts of the case are that the parties herein are couples and their marriage was solemnized on 26.01.2018. Due to differences of opinion between them, both are living separately right from 21.04.2018, i.e., within a period of three months 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 I.D.O.P.No.-- of 2018 in SR.No.4372, seeking to dissolve the marriage solemnized between them, along with an interlocutory application seeking waiver of the limitation period, as per Section 10A(1) of the Divorce Act. The said petitions were returned by the Court below, without numbering, since the cooling off period has not yet lapsed. Hence, the parties are before this Court for the aforesaid relief.

3. The learned Counsel for the petitioners 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, because they have to move on into their professional as well as personal life. Relying upon an unreported decision of this Court in **CRP (MD) No.333 of 2018, dated 12.03.2018, in the case of**



A.Vaigundamani v. R.Anandhi, the learned Counsel would pray for allowing the present civil revision petition.

4. Heard the learned Counsel appearing for the petitioners.

5. This Court, in similar circumstances, in **A.Vaigundamani's** case (cited supra), after discussing various aspects, has directed the Court below to number the unnumbered HMOP petition and further directed the Court below to decide the same, within a stipulated time limit. For better appreciation, the same is extracted thus:

"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.''

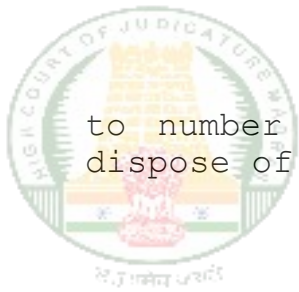
9. In the present case on hand, both the parties have jointly filed H.M.O.P., seeking divorce on mutual consent, which itself shows that there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation and all the efforts made by their elders, for amicable 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."

6. Since the present case on hand is squarely covered by the above decision, this civil revision petition is allowed on the above terms and the learned Principal District Judge, Theni, is directed



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to number the unnumbered I.D.O.P.No.-- of 2018 in SR.No.4372 and dispose of the same, in accordance with law. No costs.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Principal District Judge,
Theni.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)
(To return the original papers,
so as to enable the parties to produce
it before the Court below).

+ 1 CC TO Mr.D.VENKATESH, ADVOCATE IN SR No. 97736

GK

TE/SV/SAR-4 : 17/12/2018 : 4P/5C

C.R.P. (PD) (MD) No.2655 of 2018
29.11.2018