

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.4423 of 2018

ORDER:

This civil revision petition under Article 227 of the Constitution arises out of the order dated 24.07.2018 passed by the learned IV Additional District Judge-cum-Judge, I Additional Family Court, Ranga Reddy District at L.B.Nagar, in SR.No.1831 of 2018 in FCOP No.1 of 2018.

The said interlocutory application was filed by the petitioner herein, the wife, under Order 6 Rule 17 CPC, seeking to convert her petition filed under Section 12(1)(a) of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955'), into a petition for divorce by mutual consent under Section 13-B of the Act of 1955. By the order under revision, the trial Court opined that as the six months statutory cooling period has not been completed, the amendment petition could not be entertained and accordingly dismissed it.

Heard Sri K.Ravinder Reddy, learned counsel representing Sri M.A.K.Mukheed, learned counsel for the petitioner-wife, and Sri G.Vasantha Rayudu, learned counsel representing Sri Sridhar Tummalapudi, learned counsel for the respondent-husband.

It may be noticed that by way of the subject application, the petitioner-wife merely sought conversion of her petition filed under Section 12(1)(a) of the Act of 1955 into a petition for divorce by mutual consent under Section 13-B thereof. For entertaining a petition for divorce by mutual consent under Section 13-B of the Act of 1955, all that is required is that the parties to the marriage should have lived separately for a period of one year or more. It is not in dispute that this condition is duly satisfied. The waiting period of six months is in the context of granting a decree of divorce by mutual consent after institution of such a petition. The insistence by the trial Court upon the statutory cooling

period of six months being completed as a condition precedent for even allowing the conversion of the petition into one filed under Section 13-B of the Act of 1955 cannot be countenanced. Such a procedure is not contemplated by the Act of 1955. Therefore, the trial Court erred in rejecting the plea of the petitioner-wife for conversion of her petition into one for divorce by mutual consent under Section 13-B of the Act of 1955.

The order under revision is accordingly set aside and the subject I.A. filed by the petitioner-wife in SR No.1831 of 2018 in FCOP No.1 of 2018 is allowed. The trial Court shall consider FCOP No.1 of 2018 as one filed under Section 13-B of the Act of 1955 and deal with the same accordingly.

The civil revision petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

10th August, 2018

Note:-

Issue CC by 13.08.2018.

(B/o)

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JUSTICE SANJAY KUMAR

