

THE HON'BLE SRI JUSTICE N.BALAYOGI

Civil Revision Petition No.6144 of 2018

ORDER :

The petitioner aggrieved by the order dated 27.7.2018 in I.A. No.987 of 2018 in HMOP No.60 of 2018 on the file of the Senior Civil Judge, Sangareddy, preferred this revision.

2. The petitioner and respondent herein, who is the 1st petitioner in HMOP No.60 of 2018, filed an application under Section 13-B(2) of the Hindu Marriage Act for divorce by mutual consent before the Senior Civil Judge, Sangareddy, which was dismissed.

3. The brief facts of the case are that their marriage was solemnized on 4.12.2016 at Hyderabad, which was registered on 19.12.2016 before the Registrar of Marriages, Khairathabad. The petitioner and respondent are residing in different cities before and after their marriage, except for few days stayed together at Sanga Reddy in the house of the petitioner/husband. Owing to incompatibility of temperaments between them, they could not get along in matrimonial life. In spite of best efforts, they have not been able to reunion and live together. Since 5.1.2017 their matrimonial life came to an end. There is no possibility of any reconciliation or reunion. Their marriage is irretrievably broken down. After giving

much thought, they have decided to dissolve their marriage through court of law by mutual consent.

4. Further, the petitioner and respondent are well educated, employed and sufficiently earning, as such they are not making any claims against each other. Both parties are settled and agreed that they have no objection to lead their life as per their wish and desire.

5. The petitioner and respondent herein filed I.A. No.987 of 2018 in HMOP No.60 of 2018 under Section 13-B(2) of Hindu Marriage Act to waive the statutory period of waiting six months as provided under Section 13-B(2) of Hindu Marriage Act and consequently to grant divorce by way of mutual consent dissolving the marriage. The Senior Civil Judge dismissed the application, which leads to the present appeal.

6. Now, the point that arises for determination is :

“Whether the statutory period of waiting six months as provided under Section 13-B(2) can be waived?”

7. The learned counsel appearing for both parties contend that since both parties are well educated, well settled and the marriage tie is irretrievably broken down and as there is no possibility of reconciliation or reunion, the statutory period of waiting six months can be waived.

8. The undisputed facts spell out from the record are as follows :

The marriage of the petitioner and the respondent was solemnized on 4.12.2016 at Hyderabad, which was registered on 19.12.2016 before the Registrar of Marriages, Khairathabad. The petitioner and respondent are residing in different cities before and after their marriage, except for few days stayed together at Sanga Reddy in the house of the petitioner/husband. Owing to incompatibility of temperaments between them, they could not get along in matrimonial life. In spite of best efforts, they have not been able to reunion and to live together. Since 5.1.2017 their matrimonial life came to an end. There is no possibility of any reconciliation or reunion. Their marriage is irretrievably broken down. After giving much thought, they have decided to dissolve their marriage through court of law by mutual consent.

9. The text of Section 13-B is as follows :

“13-B. *Divorce by mutual consent*.—(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments

in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

10. In the case of *Amardeep Singh Vs. Harveen Kaur* ¹ the Apex Court held that for determining whether provision is mandatory or directory, language alone is not decisive and court must have regard to context, subject-matter and object of provision – Court can waive off statutory period under Section 13-B(2) in its discretion after considering following factors :

(i) statutory period of six months specified in Section 13-B(2) in addition to statutory period of one year separation under Section 13-B(1) is already over before first motion itself;

(ii) no likelihood of reconciliation between parties;

(iii) parties have genuinely settled all their differences including alimony, custody of child or any other pending issues; and

(iv) whether waiting period would only prolong agony.

11. Thus, cooling off period being directory, the Court can exercise discretion to the facts and circumstances of the each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.

12. In the case on hand the marriage between the parties to the HMOP No.60 of 2018 was performed on 4.12.2016 and the said marriage was registered with the Registrar of Marriages, Khairathabad

¹ (2017) 8 SCC 746

on 19.12.2016. Since 5.1.2017 there is no matrimonial relationship between the parties, accordingly, it came to an end. The petition was filed on 4.6.2018, therefore, the statutory period of one year separation under Section 13-B(1) is already over before filing the HMOP No.60 of 2018. All the efforts to get rejoin on either side personally and through caste elders and well-wishers were proved futile and there is no possibility of any reconciliation or reunion between the parties. So, both wife and husband decided to dissolve their marriage in a Court of law by mutual consent. Therefore, there is no likelihood of reconciliation between the parties as all the attempts made by both parties through caste elders and well-wishers proved futile.

13. It is also specifically averred in the divorce application by mutual consent signed by both parties that both are well educated, employed and sufficiently earning, as such they are not making any claims against each other, either with regard to properties, both movable and immovable, as well as alimonies/marriage expenses etc., Further, both parties agreed that they should not interfere with day-to-day affairs of each other party by any means, either by way of cell phones, telephones, facebook, emails or otherwise and further that they should not misuse any communication made earlier between them or anything is within them, by any means shall not act against each other and further that they have no objection to lead their life as per their own wish and desire. During the wedlock they are not blessed with any children or they have any other pending issues.

14. In such circumstances, I am of the considered view that further waiting period of six months after filing the concerned divorce O.P. would only prolong agony and it can be waived by exercising discretion in the facts and circumstances discussed above, since the period mentioned in Section 13-B(2) is not mandatory, but discretionary.

15. I am of the further view that the object of the provision 13-B(2) is to enable the parties to dissolve the marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The main object of the cooling off period is to safeguard against the decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there is no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.

16. By applying the above decision relied on by both parties to the present situation, I am of the view that the statutory period of six months specified under Section 13-B(2) is in addition to the statutory period of 1 year under Section 13-B(1). All efforts for mediation/conciliation including efforts in terms of Order 32-A 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. After filing this appeal, this Court tried to reconcile the parties interacting with both parties and their parents, but there is no amicable settlement of the dispute and ultimately, I came to the conclusion that the marriage between the parties is irretrievably broken down and there is no possibility of reunion or reconciliation and continuation of their marriage would only extend mental agony to them.

17. Further, I am of the opinion that parties have genuinely settled their differences, including alimony and their settlement in future. They are also not blessed with any children. As such, I am of the strong view that the waiting period will only prolong their agony. The waiving off the statutory period is within the discretionary power of this Court mentioned in Section 13-B(2) and it is not mandatory, but discretionary and by exercising the discretion in the facts and circumstances of this case, I am of the further view that there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation. The mediation attempted by this Court also failed. Accordingly, the order of the trial Court is liable to be set aside.

18. In the result, the Civil Revision Petition is allowed while setting aside the order dated 27.7.2018 in I.A. No.987 of 2018 in HMOP No.60 of 2018 on the file of the Senior Civil Judge, Sangareddy. Both parties are now at liberty to approach the Senior Civil Judge, Sangareddy, for fresh consideration in the light of this order. No order as to costs.

19. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE N.BALAYOGI

15th November, 2018

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