

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No. 1775 of 2018
Date of decision: 16.03.2018

Silky

....Petitioner(s)

Versus

Parveen Kumar

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Alisha Soni, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The present revision petition is directed against the order dated 29.01.2018 passed by the Family Court, Hisar whereby, the application for waiving off the statutory period of six months under Section 13-B(2) of the Hindu Marriage Act, 1955 (in short 'the Act') has been dismissed. The reasons which have weighed with the Court are important to notice which are as under:-

“Heard. Although the couple is already living separately for last one year by now. However, the couple is blessed with a little girl who is only seven months old and they have lived together only for a period of ten months. This period of a very short time to fully understand each other. Though, they are claiming that they have already exhausted all the possibilities of reconciliation. However, in the considered opinion of this Court wherein the couple has barely given a chance to understand each other and have created bickerings in short span of ten months living together, it is not a fit case wherein statutory period of six month should be waived off.

Consequently, this request is declined. Now, to come up on 31.07.2018 for recording statement of second motion.”

Counsel for the petitioner has argued that the Court has the discretion as such to waive off the period in view of the judgment of the Apex Court in ***Civil Appeal No. 11158 of 2017, Amardeep Singh vs. Harveen Kaur*** dated 12.09.2017.

A perusal of the paper book would go on to show that the marriage was only solemnized on 05.01.2016 and there is a girl child namely Sonam out of the wedlock. The parties though have been residing separately since 15.11.2016 and an averment has been made that an effort was made to settle the matter by the Biradari Panchayat and it was decided that the matter would be resolved by mutual consent by filing a petition under Section 13B of the Act. Counsel has not been able to even point out as to how the minor daughter would be adjusted and what will be the alimony as such which the respondent will pay in pursuance of the divorce to be granted and whether the petitioner is in a position to look after her and fund her studies as she grows up. The initial statement was recorded on 29.01.2018 only and now the case is fixed for 31.07.2018. The Apex Court in *Amardeep Singh's case (supra)* has held that the period of six months is laid down to enable the parties to have a rethink and if there is any chance of reconciliation. The cooling off period is only a safeguard against a hurried decision and the Court is not powerless as such to waive off the period. The discretion as such has been left to the Court. The relevant portion in *Amardeep Singh's case (supra)* reads thus:-

“15. We have given due consideration to the issue involved. Under the traditional Hindu Law, as it

stood prior to the statutory law on the point, marriage is a sacrament and cannot be dissolved by consent. The Act enabled the court to dissolve marriage on statutory grounds. By way of amendment in the year 1976, the concept of divorce by mutual consent was introduced. However, Section 13B(2) contains a bar to divorce being granted before six months of time elapsing after filing of the divorce petition by mutual consent. The said period was laid down to enable the parties to have a rethink so that the court grants divorce by mutual consent only if there is no chance for reconciliation.

16. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling off the period was to safeguard against a hurried 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 was 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.

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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.”

Resultantly, keeping in view the above observations and the

absence of details qua the following above condition, the discretion which

has been exercised by the Family Court does not warrant any interference as such and the present petition is dismissed in limine.

16.03.2018
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No