



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.1487 of 2019

WEB COPY

1.R.Karthikeyan
2.Seetha @ Preethi

... Petitioner/
Petitioner

Vs.

Nil

... Respondent/
Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, praying to direct the learned Principal Subordinate Judge, Pudukkottai to expedite the trial in H.M.O.P.No.152 of 2019 within a time frame.

For petitioners : Mr.D.Rameshkumar

ORDER

This Civil Revision Petition has been filed by the petitioners seeking a direction to the learned Principal Subordinate Judge, Pudukkottai, to dispose of H.M.O.P.No.152 of 2019 pending on his file, within a stipulated time.

2. The learned counsel for the petitioners submitted that the marriage between the first and second petitioners was solemnized on 06.05.2018 and due to misunderstanding, the 2nd petitioner went to her parental home and they have been living separately for more than one year. On 24.06.2019 both the petitioners have filed H.M.O.P.No.152 of 2019 for divorce on mutual consent. The grievance of the petitioners is that though the statutory period mentioned in Section 13-B(2) of the Hindu Marriage Act is not mandatory in the case of divorce on mutual consent, the Court below has adjourned the case to 20.12.2019 for completion of 2nd motion of statutory period. Hence, the petitioners have come up with this petition.

3. Heard the learned counsel for the petitioners.

4. In a recent judgment reported in **(2017) 8 SCC 746, Amardeep Singh Vs. Harveen Kaur**, the Hon'ble Supreme Court has held that the Court can waive the statutory period stipulated under Section 13-B (2) of the Hindu Marriage Act, after considering certain parameters. The relevant portions are extracted hereunder:-

'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.''

(emphasis supplied)

5. 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 a catena of decisions, has given a categorical finding that granting

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divorce to a couple, after a considerable period of time, is nothing but operation success but patient died and has further 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."

6. From the above decision, it is clear that the Court below can waive the six month period contemplated in Section 13-B(2) of the Act. In the 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.

7. In view of the above and considering the limited relief sought for by the petitioners in this petition and the stage of the HMOP petition, this Court is inclined to issue the following direction to the Court below:

The learned Principal Subordinate Judge, Pudukkottai, is directed to advance the hearing of HMOP and dispose of HMOP on merits and in accordance with law as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. The petitioners are directed to cooperate with the Court below for early disposal of the case.

8. This revision petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The Principal Subordinate Court, Pudukkottai.

+1 CC to Mr.D.RAMESHKUMAR, Advocate SR-84263.

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