



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (PD) (MD) .No.1507 of 2019

1.R.S.Sai Amarnath

2.S.K.Jamuna

... Petitioners /Petitioners/Petitioners

Vs.

Nil

... Respondent

PRAYER:- Petition filed under Article 227 of the Constitution of India, against the petition order dated 13.08.2019 made in I.A.No.65 of 2019 in H.M.O.P.No.120 of 2019 on the file of the Sub Court, Uthamapalayam.

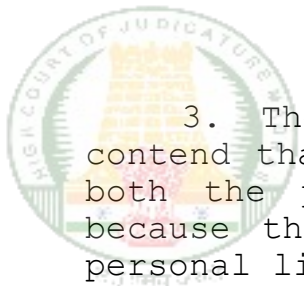
For Petitioners

: Mr.G.Vanjinathan

ORDER

This Civil Revision Petition has been filed against the petition order dated 13.08.2019 made in I.A.No.65 of 2019 in H.M.O.P.No.120 of 2019 on the file of the Sub Court, Uthamapalayam.

2. The facts of the case are that the parties herein are couples and their marriage was solemnized on 27.08.2017 at Kambaraya Perumal Kasi Viswanatha Swami Thirukovil, Cumbum. Due to differences of opinion between them, both are living separately and there are no issues. The petitioners stated that no reconciliation is possible and they are not able to live together in the matrimonial harmony. Hence, they had filed a petition under Section 13-B of the Hindu Marriage Act, 1955, in H.M.O.P.No.120 of 2019, seeking to dissolve the marriage solemnized between them on the ground of mutual consent, along with an application in I.A.65 of 2019 to advance the hearing of the case from 22.01.2020 to 05.08.2019 and thereby dispose of the same. The said application was dismissed by the learned Judge on the ground that the petitioner/husband did not file any proof to show that he got offer to work in Singapore and his visa is also expired on 25.04.2016 itself. 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.

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4. In support of their contention, the learned Counsel for the petitioners placed reliance on the judgment of 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)**, wherein, this Court, after a detailed and elaborate observation, has granted divorce to the parties therein.

5. Heard the learned Counsel appearing for the parties and perused the documents placed on record.

6. Perusal of record shows that the marriage between the parties had taken place on 27.08.2017 and due to some difference of opinion, both of them were not interested with each other and they lived as husband and wife only for a few months and thereafter, they are living separately.

7. 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;

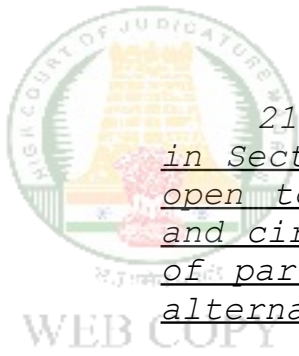
iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

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.''

8. In the present case on hand, both the parties have jointly filed H.M.O.P.No.120 of 2019, seeking divorce on mutual consent, which itself shows that there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.

9. 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."

10. In view of the foregoing discussions, the order dated 13.08.2019 passed in I.A.No.65 of 2019 in H.M.O.P.No.120 of 2019 on the file of the learned Subordinate Court, Uthamapalayam, is set aside and if there is no possibility of reunion, the learned Judge 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.



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11. This Civil Revision Petition is allowed accordingly. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

msa

To

The Subordinate Judge,
Uthamapalayam.

+1 CC to Mr.G.VANJI NATHAN, Advocate SR-84673.

**C.R.P (PD) (MD) .No.1507 of 2019
30.08.2019**

CS(11.10.2019) 4P 3C