

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.88 of 2019 (O&M)
Date of Decision : 08.02.2019**

Ekta Verma

.....Petitioner

Versus

Avtar Singh

.....Respondent

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Rajan Gupta, Advocate for
for the petitioner.

Mr. Salinder K. Saini, Advocate
for the respondent.

SUDIP AHLUWALIA, J. (ORAL)

CM No.1536-CII of 2019

Both the parties are permitted to place on record their
respective affidavits (Annexures P-7 and P-8)

Application stands disposed off.

CR No.88 of 2019

This Revision Petition is directed against the impugned
order passed by the Ld. Additional Civil Judge (Senior Division),
Phillaur in HMA No.109 of 2018 on 19th December, 2018.

2. Vide the impugned order, the Ld. Court below had
dismissed the application filed on behalf of the present petitioner/wife
for waiving off the statutory period of six months to finalize the joint

petition of the parties under Section 13(B) of the Hindu Marriage Act, 1955 (for short, 'the Act'), which was otherwise pending for 4th March, 2019. The Ld. Court below however rejected the application with the following observations *inter alia* -

“4. But as per the provision of 13-B(2)(ii), it is specified that all efforts for mediation/conciliation including efforts in terms of Order XXXIIA Rule 3 Code of Civil Procedure/Section 23(2) of the Act/ Section 9 of the Family Courts Act to reunite the parties has been failed and there is no likelihood of success in that direction by any further efforts, but in the present case, both the petitioner have not appeared before any mediation and no efforts were made by the parties to rehabilitation the matter. Moreover, no compromise/agreement was reduced into writing by both the parties even only petitioner No.1 has moved this application, although the other party has raised no objection. The period of six months has been laid down to the parties to have a rethink so that the Court grant divorce by mutual consent only if there is no chance for reconciliation. In view of the above said discussion, no ground is made out to allow the present application. So, the present application is not maintainable being devoid of merits deserves to be dismissed and accordingly, the same stands dismissed.”

3. The parties are aggrieved that even the relevant judgment of the Hon'ble Supreme Court of India, which has been talked about only

in passing at two points in the impugned order, was never discussed by the Ld. Trial Court.

4. The aforesaid judgment in the case of '**Amardeep Singh vs. Harveen Kaur**', 2017(4) R.C.R.(Civil) 608, passed by the Apex Court has now been relied upon by the parties before this Court in which it was observed *inter alia* -

“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.”

5. From the statements made in the affidavits of the parties placed on record today, it is ascertained that their marriage took place on 20th February, 2005, and that the petitioner left her matrimonial home on 10th September, 2015 after which they continued to reside separately for a period of three years till the HMA Petition was filed on 4th September, 2018. In this manner, the statutory period of six months specified in Section 13-B(2) of the Act apart from the statutory period of one year under Section 13-B(1), of separation of parties was already over before the first motion itself. It has also been stated on Oath that all efforts at mediation and conciliation to reunite the parties had failed

and there was no likelihood of success in that direction and that the parties have genuinely settled their differences including alimony, custody of child etc. and the waiting period would only be to their detriment since according to petitioner/wife, she stands so lose the chance of a better future settlement proposal which is presently available to her.

6. In view of the above-mentioned circumstances, this does appear to be a fit case for intervention by this Court in the light of the observation of the Apex Court in *Amardeep Singh's case* (supra).

7. For the aforesaid reasons the present Revision Petition is allowed and the impugned order is set aside.

8. The parties are directed to approach the Ld. Court below for getting the needful done regarding second motion in the pending application under the Hindu Marriage Act.

February 08, 2019

Dpr

**(SUDIP AHLUWALIA)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No