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

CR No. 7995 of 2018
Date of Decision: 26.02.2019

Shamsher Singh

-Petitioner No.1

Vs

Sunita Jamwal

-Petitioner No.2

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Satpreet Grewal Kapila, Advocate,
for the petitioners.

RAJ MOHAN SINGH, J.

This is a petition filed under Article 227 of the Constitution of India praying for setting aside the order dated 16.10.2018 passed by Sub Divisional Judicial Magistrate, Mukerian whereby the case was adjourned for six months for recording second motion.

Petitioners No.1 and 2 crave indulgence of this Court for waiving the period of six months for recording second motion under Section 13-B of Hindu Marriage Act.

Petitioners No.1 and 2 also seeks issuance of necessary directions to the trial Court to waive period of six months as per ratio of **Amardeep Singh vs Harveen Kaur, 2017(4) RCR (Civil) 608** wherein the Hon'ble Apex Court has

observed that the period mentioned in Section 13-B (2) of Hindu Marriage Act is not mandatory, rather the same is directory and it is open to the Court to exercise its discretion in the facts and circumstances of the case. The Court has to see whether there is any possibility of parties resuming cohabitation or chances of alternative rehabilitation for the purpose of waiving the statutory period of six months.

Section 13-B (1) of the Act relates to the jurisdiction of the Court and the petition is maintainable only if the parties are living separately for a period of one year or more and if they have not been able to live together and have agreed that the marriage be dissolved, legal process can be resorted to. Section 13-B(2) of the Hindu Marriage Act is procedural. The discretion to waive the period is a guided discretion by considering the interest of justice where there is no chance of reconciliation and parties were already separated for a longer period or contesting proceedings for a period longer than the period mentioned in Section 13-B(2) of the Hindu Marriage Act. The Court has to consider the period for which the parties have been married, duration of their separation, duration of pending litigation and any other pending litigation between them. The compromise arrived at between the parties has to be genuine in nature and the same should take care of alimony, custody of child (if any)

and any other issues between them. The Court has to be satisfied that the parties are living separately for more than the statutory period and all efforts at Mediation and Conciliation Centre have been tried and have failed and there is no chance of reconciliation and further waiting period will only add to the agony of the parties.

For waiving the statutory period under Section 13-B (2) of the Hindu Marriage Act, following conditions are to be fulfilled:-

- (i) the statutory period of six months specified in Section 13-B(2) of the Hindu Marriage Act in addition to the statutory period of one year under Section 13-B(1) of the Hindu Marriage Act of separation of the parties is already over before the first motion itself;
- (ii) all efforts for mediation and 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;
- (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.

Evidently, Section 13-B (2) of Hindu Marriage Act is not mandatory but the same is directory and the period of six months can be waived, subject to satisfaction of the Court in a given case.

In the instant case, the parties have entered into amicable settlement. It has come on record that the parties have finally decided to part ways as all efforts of rehabilitation have proved futile and the parties are living separately for the last more than one year. After due deliberations, they have decided to part ways and to file a mutual divorce. Marriage has broken irretrievably and therefore, cooling off period would be futile.

The marriage was solemnized on 24.07.2015 as per Hindu rites and ceremonies. The parties have been residing separately since 05.10.2017.

As per the compromise, petitioner No.2 has received all her dowry articles and ornaments from petitioner No.1. Petitioner No.1 has also received his gold ornaments and belongings from petitioner No.2. Petitioner No.1 has agreed to pay an amount of Rs.7.5 lacs to petitioner No.2 as full and final

maintenance in lumpsum for herself and minor children.

Out of the aforesaid amount, petitioner No.2 has received Rs.4 lacs from petitioner No.1 and petitioner No.1 has agreed to pay the balance amount of Rs.3.5 lacs to petitioner No.2 at the time of recording second motion.

All the ornaments inter-se have been returned to each other and nothing is due. Part payment has already been made to petitioner No.2. Arrangement has been made for minor children while computing the payable amount to petitioner No.2. Both the parties are satisfied to the terms and conditions of the compromise.

In view of **Smt. Pooja vs Tarun, 2017(3) M.P.W.N. 227, Civil Revision No.6356 of 2018 titled 'Anilesh Yadav vs Swati Yadav' decided on 24.09.2018** and **Civil Revision No.14322 of 2018 titled 'Sonia vs Mahesh Kumar Soni' decided on 17.01.2019** as well as in view of ratio of **Amardeep Singh's case (supra)**, indulgence can be granted in the present case by directing the trial Court to waive the period of six months for recording the statements of the parties at second motion.

In view of above, statutory period of six months can be waived and the parties can be allowed to part ways in view of divorce by mutual consent.

The revision petition is accordingly, allowed and impugned order dated 16.10.2018 is hereby set aside.

Necessary statement shall be recorded by the trial Court in the aforesaid context where both the parties would appear on 07.03.2019.

26.02.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No