

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.2091 of 2019(O&M)
Date of Decision: 28.03.2019

Jasjeet Singh

.....Petitioner

Versus

Tanu

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Amardeep Singh, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. This revision petition has been preferred against the order dated 14.03.2019 passed by Additional Principal Judge, Family Court, whereby the application for waiving off the statutory period of six months in a petition under Section 13-B of the Hindu Marriage Act was dismissed.

[2]. Notice of motion.

[3]. At this stage, Mr. Kamaldip Singh Sidhu, Advocate

appeared on behalf of the respondent and stated that respondent has no objection to the prayer made by the petitioner for waiving off the statutory period of six months for recording statements of the parties in second motion in a petition under Section 13-B of the Hindu Marriage Act.

[4]. Marriage between the parties was solemnized on 07.01.2006. Two children took birth from this wedlock. Son namely Harmeet Singh took birth on 08.01.2008 and daughter namely Tanvi took birth on 04.12.2013. As per settlement between the parties, both the children are with the father and would remain in the custody of father.

[5]. Both the parties are *ad idem* that they are living separately since the year 2014 and marriage has irretrievably broken down. Efforts of reconciliation did not fructify and the couple has virtually parted ways since 2014 and thereafter, in view of consensus arrived at between the parties, petition under Section 13-B of the Hindu Marriage Act was filed on 22.02.2019. First motion has already been recorded on 26.02.2019 and now the case is fixed for 02.09.2019 for recording statements of the parties in second motion.

[6]. In **Amardeep Singh Vs. Harveen Kaur, 2017(4) RCR (Civil) 608**, the Hon'ble Apex Court has observed that the period mentioned in Section 13-B(2) of the 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 each 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 Hindu Marriage 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. Section 13-B(2) of the Hindu Marriage Act is procedural in nature. The discretion to waive the period is a guided discretion by considering the interest of justice where there is no chance of reconciliation between the parties. Since the parties are living separately since 2014, therefore, ingredients of Section 13-B(2) of the Hindu Marriage Act are satisfied. For waiving the statutory period of six months, the Court has to consider the period for which the parties have been married, duration of their separation, duration of pending litigation, any other pending litigation between them and whether they have resorted to proceedings of Mediation and Conciliation. 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 pending issues between them. In addition to **Amardeep Singh's case (supra)**, learned counsel for the petitioner also refers to **Smt. Pooja Vs. Tarun, 2017(3) M.P.W.N. And CR No.6356 of 2018** titled **Anilesh Yadav Vs. Swati Yadav** decided on 24.09.2018.

[7]. It appears that the custody of the minor children has been amicably given to the father who is in a position to maintain and upbringing the children. Though there is no mention about the permanent alimony in the petition, but learned counsel for the respondent stated that the wife has received full and final settlement of her claim for granting divorce by mutual consent. The custody of the children would remain with the husband.

[8]. In view of aforesaid facts, I am satisfied that the parties are living separately for more than statutory period and all efforts to mediate have been tried and have failed to yield any reconciliation between the parties. Further waiting period only add to the agony of the parties. For waiving off the period of six months, all the ingredients are satisfied in terms of Section 13-B (2) of the Hindu Marriage act.

[9]. Since the provision has been held to be directory and parties have agreed to dissolve their marriage by filing petition under Section 13-B of the Hindu Marriage Act and all other arrangements have already been made for future prospects of

the concerned parties, therefore, I deem it appropriate to accept this revision petition in order to enable the parties to secure their future prospects in lives. Impugned order is accordingly set aside. Normal consequences to follow.

28.03.2019	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No