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

CR No. 3071 of 2019

Date of Decision: 09.05.2019

Dharamveer

-Petitioner No.1

Vs

Smt. Rekha Maurya @ Rekha Rani

-Petitioner No.2

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Nafees Ahmad Khan, Advocate,
for the petitioners.

RAJ MOHAN SINGH, J. (ORAL)

1. Petitioners have jointly filed this revision petition against the order dated 29.04.2019 passed by Additional Principal Judge, Family Court, Gurugram vide which statutory cooling period of six months was not dispensed with.

2. Parties were married on 28.01.2014 according to Hindu rites and ceremonies. One female child took birth out of this wedlock on 16.03.2016 and the daughter is in care and custody of wife i.e. petitioner No.2.

3. Due to matrimonial discord, the parties could not pull on matrimonial ties smoothly and as a result of that, both of them decided to take divorce by mutual consent.

4. A petition under Section 13-B of Hindu Marriage Act was filed on 01.04.2019. Statements of the parties in first motion

were recorded on 01.04.2019 itself and the case was adjourned to 07.10.2019 for recording their statements in second motion. Parties are living separately since September, 2017. Petition under Section 13-B of Hindu Marriage Act for divorce was filed on 01.04.2019 i.e. after expiry of one year of separation.

5. 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 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 resuming cohabitation between the parties or there is any chance of rehabilitation.

6. 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. 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 separated for a longer period. The Court has to consider the period for which the parties have been married.

7. According to the petitioners, effort to re-concile has not yielded any positive result. The compromise arrived at between the parties is genuine and is in the interest of the parties. The custody of minor daughter shall remain with her mother. Interest of the minor has been taken care of by fixing permanent alimony for the wife as well as for the child. Adequate arrangement has been made for the minor child towards her past, present and future maintenance.

8. 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.

9. Evidently, Section 13-B (2) of Hindu Marriage Act is not mandatory but the same is directory. Both the parties are living separately for the last more than one year. Parties with a view to secure their better prospects have entered into a settlement before filing the petition under Section 13-B of the Act vide which they have decided to dissolve their marriage by mutual consent. Marriage between the parties has broken irretrievably and there is no compatibility between them. They have already exchanged their jewelleries with each other. Petitioner No.2 has received all her dowry articles from petitioner No.1 and petitioner No.2 and her daughter will have equal share in the immovable property of petitioner No.1 besides right of residence in the house situated in village Kalyaka. Petitioner No.1 will pay an amount of Rs.5 lacs in lumpsum to petitioner No.2 towards her past, present and future maintenance. Out of the said amount, an amount of Rs.2.5 lacs has already been paid to petitioner No.2 at the time of recording

first motion and remaining amount of Rs.2.5 lacs is to be paid to petitioner No.2 by petitioner No.1 at the time of recording second motion.

10. Except the aforesaid, petitioner No.2 will not be entitled to any other maintenance from petitioner No.1. The custody of minor will remain with petitioner No.2. Petitioner No.1 and his parents will not be entitled to claim the custody of the minor at any point of time. Arrangement has been made for the maintenance of the minor child. Petitioner No.1 will have visiting rights twice a month on any holiday with mutual consent of both the parties. Petitioner No.1 will pay Rs.30,000/- towards expenses of school fee etc. of the minor child till her attaining the majority.

11. In view of ratio of **Amardeep Singh's case (supra)**, statutory period of six months after expiry of period of one year can be waived in view of facts and circumstances of the case.

12. In view of above, I find that further delay would entail in further agony of the parties as their prospects of further rehabilitation would be materially barred by such delay. Requisite period of one year has already expired.

13. In view of aforesaid, statutory period of six months is relaxed and the parties are allowed to part ways by taking divorce with mutual consent.

14. The revision petition is accordingly, allowed and impugned order dated 29.04.2019 is hereby set aside. Petitioner No.1 will pay remaining amount of Rs.2.5 lacs before the trial Court.

15. Necessary statement shall be recorded by the trial Court in the aforesaid context where both the parties would appear on 20.05.2019.

09.05.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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