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

CR No. 5324 of 2019
Date of Decision: 03.09.2019

Jyoti

-Petitioner

Vs

Baljinder Singh

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Neeraj Madaan, Advocate,
for the petitioner.

Mr. Brijesh Khosla, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (ORAL)

1. Petitioner has preferred this revision petition against the order dated 17.08.2019 passed by District Judge, Fazilka, dismissing the application for exemption of statutory period of six months in a petition under Section 13-B of Hindu Marriage Act.

2. Petition under Section 13-B (i) of the Hindu Marriage Act was filed by the respondent on the ground that the marriage between the parties was solemnized on 12.03.2017 at Fazilka according to Sikh rites and ceremonies in the presence of relatives and friends.

3. Parties separated from each other in the month of

April, 2017 i.e. just after one month of marriage. No issue was born out of this wedlock.

4. Petitioner is serving as Assistant Professor in Shaheed Udham Singh College, Chandigarh and the respondent-husband is permanent resident of Dhani Vishakha Singh, Arniwala Sheikh Subhan, Tehsil and District Fazilka.

5. Petitioner cannot leave place of her posting. Both of them ultimately decided to part ways by entering into a settlement. According to the settlement claim, dowry articles, Istridhan and gold ornaments have been returned to the petitioner. Other gift items and permanent alimony have been settled and paid to the petitioner. She has agreed that she will not claim any maintenance in future after passing of decree for dissolution of marriage either from the respondent-husband or from the property.

6. Both the parties seek 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.

7. First motion was recorded by the District Judge, Fazilka on 17.08.2019 itself while dismissing the prayer for exemption of statutory period of six months for granting divorce in the case of mutual consent.

8. 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.

9. In the instant case, parties lived together only for one month and they are separated since April, 2017. In such a situation, legal process can be resorted to. 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 and parties were already separated for a longer period or contesting the 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. All other attending circumstances of the case are also required to be noticed by the Court.

10. In the instant case, as per pleadings made in joint petition under Section 13-B of the Act, parties have settled all the issues in respect of dowry articles, Istridhan and other gifts and permanent alimony with intervention of respectable of the families. Even claim in respect of future maintenance was also amicably decided between the parties. 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.

11. In the instant case, since the parties lived together only for one month after the marriage in the month of March, 2017, therefore, it can be appreciated that period of separation as on date is more than 02 years and there is no chance of reconciliation keeping in view the avocation of petitioner and permanent residence of respondent. Above all, both of them have decided to part ways by resolving all their claims. Waiting for further period will only add to the agony of the parties.

12. 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.

13. Since the provision in terms of Section 13-B (2) of Hindu Marriage Act is not mandatory and the same is directory and the period of six months can be waived, subject to satisfaction of the Court in a given case, therefore, in the instant case, this Court is satisfied that waiting period of further six

months would definitely add to the agony of the parties.

14. The ratio of Amardeep Singh's case (supra) has been followed in 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.

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

16. For the reasons recorded hereinabove, I deem it appropriate to set aside the impugned order dated 17.08.2019 passed by District Judge, Fazilka. The revision petition is accordingly, allowed.

17. Necessary statement shall be recorded by the trial Court in the aforesaid context where both the parties would appear on 16.09.2019.

03.09.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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