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

**Civil Revision No.5639 of 2019 (O&M)
Date of Decision: 11.09.2019**

RAJESH KUMAR

.....Petitioner

Vs

NISHA KUMARI

....Respondent

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

Present: Mr. Sandeep S. Majithia, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has preferred this revision petition under Article 227 of the Constitution of India praying for setting aside the order dated 03.09.2019 passed by the Addl. District Judge, Mohali whereby the prayer for waiving off the cooling period of six months for grant of divorce under Section 13-B of the Hindu Marriage Act (hereinafter to be referred as 'the Act') was rejected.

[2]. Notice of motion.

[3]. Mr. Sylvester Stephen, Advocate appears and accepts notice on behalf of the respondent. Learned counsel also prays for the same relief.

[4]. I have considered the submissions made by learned counsel for the parties.

[5]. In a way this is a petition for issuance of direction to the trial Court to waive off the period of six months as per ratio of **Amardeep Singh vs. Harveen Kaur, 2017(4) R.C.R. (Civil) 608**, wherein the Hon'ble Apex Court has observed that the period mentioned in Section 13-B(2) of the 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.

[6]. The marriage between the parties was solemnized on 21.05.2018 as per Hindu rites and ceremonies. Since 30.05.2018 they are living separately due to difference in temperament and difference of opinion. They have not lived under the same roof since 30.05.2018 and have decided to part ways with mutual consent. No issue has born out of the wedlock.

[7]. 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 Act is procedural in nature. The discretion to waive of the period is a guided discretion and that can be exercised by considering different parameters like remote chance of reconciliation and separation of the parties for a longer period as mentioned in Section 13-B(2) of Act. The Court has to see 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, then the Court will come to the aid of the parties in waiving the statutory period of six months.

[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]. In the instant case, the parties started living separately soon after the marriage i.e. after nine days of marriage. Reconciliation proceedings have failed. Husband intends to go abroad on some work permit/visa. A specific recital to this fact in para no.5 of the application has not been denied by the respondent, rather the application in question was filed jointly. The parties have settled their all disputes including permanent alimony, return of dowry articles/*istridhan* and there are remote chances of reconciliation. No issue was born out of the wedlock, therefore, association of the parties just for nine days can be viewed for granting permission in order to enable them to fly to lead their life independently by condoning or waiving the period of six months as required under Section 13-B of the Act.

[10]. As per compromise, respondent has received her

alimony, dowry articles and ornaments.

[11]. In view of law laid down by the Hon'ble Apex Court in **Amardeep Singh's** case (supra) and **Soni Kumari vs. Deepak Kumar, 2016(1) R.C.R. (Civil) 52**, indulgence can be granted by this Court by directing the trial Court to waive off the statutory period of six months for recording of statement of the parties at second motion and the parties be allowed to part ways in view of divorce by way of mutual consent.

[12]. In view of above, the impugned order dated 03.09.2019 passed by the Addl. District Judge, Mohali is set aside. This revision petition is allowed. Both the parties are directed to appear before the trial Court for recording their statements in second motion on 20.09.2019.

September 11, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No