

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

**CR No.14322 of 2018(O&M)
Date of Decision: 17.01.2019**

Sonia

.....Petitioner

Versus

Mahesh Kumar Soni

.....Respondent

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

Present:Mr. Vijay Lath, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. This revision petition has been preferred by the petitioner against the order dated 03.12.2018 passed by Additional Civil Judge (Senior Division), Anandpur Sahib, District Rupnagar, exercising the power under the Hindu Marriage Act, 1955, whereby application under Section 151 CPC to seek waiver of six months period under Sub Section 2 of Section 13-B of the Hindu Marriage Act was dismissed.

[2]. In pursuance of order of notice of motion dated 21.12.2018, Mr. Lovish Rattan, Advocate appears on behalf of the respondent and submits that respondent has no objection to the acceptance of the revision petition.

[3]. In view of controversy involved in the present case, I proceed to decide the case on merits.

[4]. The marriage was solemnized between the parties on 13.11.2017 according to Hindu Rites and ceremonies. After the marriage, both the parties resided together only for 10 days due to the differences which started between them from the very first day of marriage. The couple started living separately from each other w.e.f. 25.11.2017. Efforts of reconciliation did not fructify. Ultimately, both of them decided to part ways as they were living separately w.e.f. 25.11.2017. Both of them filed a joint petition under Section 13-B of the Hindu Marriage Act on 26.11.2018 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 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. 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, 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. The Court has to be satisfied that the parties are living separately for more than the statutory period and all efforts at mediation and reconciliation 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.

[6]. Section 13-B(2) of the Hindu Marriage Act is not mandatory, but directory. In the present case, both the parties are living separately for more than one year. The parties with a view to secure their future prospects in lives have entered into a compromise on 26.03.2018 to which they agreed to dissolve their marriage by filing the petition before the competent Court. Petitioner No.1 agreed to withdraw the complaint filed against petitioner No.2 and other complaint (if any). They were also agreed to dissolve their marriage by their own wish. As per the terms of the compromise, petitioner No.2/husband shall pay a

sum of Rs.11,80,000/- towards full and final settlement of claim of the wife for past, present and future maintenance. Petitioner No.1 has already received an amount of Rs.11,80,000/- vide three cheques. All the ornaments *inter se* have been returned and nothing is due against each other. Parties have no issue from the marriage in question.

[7]. Learned counsel for the petitioner placed reliance upon **Smt. Pooja Vs. Tarun, 2017(3) M.P.W.N. 227**, and **CR No.6356 of 2018 titled Anilesh Yadav Vs. Swati Yadav** decided on 24.09.2018 and contended that statutory period of six months after expiry of period of one year can be waived in view of facts and circumstances of the case and even in view of ratio laid down by the Hon'ble Apex Court in **Amardeep Singh's case (supra)**.

[8]. In view of aforesaid facts on record, I find that further delay would entail in prolonging the agony of the parties as their prospects of further rehabilitation would be materially marred by such delay. Parties have no issue. They have agreed to part ways. Period of one year and two months have already elapsed from the date of compromise.

[9]. In view of above, statutory period of six months can be relaxed and the parties can be allowed to part ways in view of divorce by mutual consent. This revision petition is accordingly

allowed. Impugned order dated 03.12.2018 passed by Additional Civil Judge (Senior Division), Anandpur Sahib, District Rupnagar is hereby set aside. Normal consequences to follow.

17.01.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No