

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18..02..2020

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.699 of 2020

S.P.Sasikumar ... Petitioner /1st Petitioner

-Versus-

J.Banu Priya ... Respondent/2nd Petitioner

Petition filed under Article 227 of the Constitution of India, praying for a direction to the learned Subordinate Judge, Tambaram, to dispose of the original petition in O.P.No.846 of 2019 filed by the petitioner seeking divorce by mutual consent within the time frame to be fixed by this court.

For Petitioner : Mr.A.M.Amutha Ganesh

For Respondent : Mr.A.Velmurugan

ORDER

This civil revision petition has been filed seeking a direction to the learned Subordinate Judge, Tambaram, to dispose of the original petition in H.M.O.P.No.846 of 2019 filed by the petitioner and the respondent herein under Section 13(B) of The Hindu Marriage Act, seeking divorce by mutual consent.

2. The petitioner is the husband of the respondent. He along with the respondent filed the original petition in H.M.O.P.No.846 of 2019 under Section 13(B) of The Hindu Marriage Act, 1955, seeking divorce by mutual consent. The grievance of the petitioner as well as the respondent is that the petition filed by them seeking to waive the statutory period has not been considered and the same has been adjourned to 15.06.2020.

3. The learned counsel for the petitioner would submit that the marriage between the petitioner was solemnized on 21.08.2015 and thereafter, due to misunderstanding, they got separated in the year 2017. Thereafter, they have decided to go for divorce

by mutual consent and filed a petition for divorce by mutual consent under Section 13(B) of The Hindu Marriage Act, along with an application under Section 13(B)(2) of The Hindu Marriage Act for waiver of statutory period. But, that application has not yet been considered by the court below and it had adjourned the same to 15.06.2020. Therefore, the petitioner is before this court for appropriate direction.

4. In *Amardeep Singh v. Harveen Kaur*, 2017 SCC OnLine SC 1073 : CDJ 2017 SC 1057, the Hon'ble Supreme Court has issued certain guidelines on the subject which read as follows:- "

18. Applying the above to the present situation, we are of the view that where the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13B(2), it can do so after considering the following :

i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;

ii) all efforts for mediation/conciliation including efforts in terms of Order XXXIIA 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.

19. The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver.

20. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court.

21. Since we are of the view that the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."

5. In the light of the above said position, the learned Subordinate Judge, Tambaram, is directed consider the application filed by the parties seeking waiver of the statutory period under Section 13(B)2 of The Act, bearing in mind the guidelines issued by the Hon'ble Supreme Court in the judgement referred to supra, and dispose of the same as expeditiously as possible and thereafter, take the the petition for divorce for hearing and pass appropriate orders on the divorce petition. The above said exercises shall be completed within a period of four weeks from the date of receipt of a copy of this order. This civil revision petition is disposed of accordingly with the above directions. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Subordinate Judge,
Tambaram, Kancheepuram District.

+2cc to M/s.A.M.Amutha Ganesh, Advocate SR.13579/2020

C.R.P.No.699 of 2020

RJI (CO)
CB(24/02/2020)