

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18..02..2020

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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

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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 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

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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.

18.02.2020

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CMP NO.9092/2020:

Petition praying this court to direct the Sub Court, Tambaram to dispose of the mutual consent Divorce petition in HMOP No.846 of 2019 filed by the Petitioner through transparent partition/Screen in between the Dais and remaining part/Advocates areas in the Court Hall (or) through video conferencing-CISCO WEBEX (or) appoint Special officer to record the Evidence expeditiously within a specific time framed by this court, having been posted on 02.09.2020 before the Hon'ble Mr.Justice M.Govindaraj, in the presence of Mr.K.Sampath Kumar for M/s.A.M.Amutha Ganesh, Advocate for the petitioners and of Mr.A.Velmurugan, Advocate for the Respondent, this court made the following order:

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.M.P.No.9092 of 2020
in C.R.P.(PD).No.699 of 2020

This Court, in its order dated 18.02.2020 in C.R.P.No.699 of 2020 issued a direction to the trial Court to dispose of the petition presented for waiver of statutory period under Section 13B (2) of the Hindu Marriage Act, 1955, within 4 weeks. However, the trial Court, sought for extension of time due to Covid-19 situation which was granted on 29.07.2020, granting three months time. The parties have produced the order copy on 06.08.2020, on which date the trial Court, based on the

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extension of time granted by this Court posted the matter for counselling on 28.08.2020. The parties have settled their differences and arrived at a mutual settlement. In view of the settlement, they have also exchanged the articles and paid half of the permanent alimony and filed a receipt in proof of the same. The parties and the counsel have filed a joint memorandum to the Court for passing appropriate orders in view of the orders passed by the Hon'ble Supreme Court in Suo Motu Writ (Civil) No.5 of 2020, dated 06.04.2020. Now that they have approached this Court by way of the above civil miscellaneous petition for direction to dispose of the matter.

2.Considering the constraints of the trial Court in entertaining the large number of litigants for physical and virtual hearing with limited infrastructure as well as the factual developments in the matter between parties, this Court referred the matter to Tamil Nadu Mediation and Conciliation Centre, High Court, Madras for online mediation.

3.The learned counsel for the petitioner as well as the learned counsel for the respondent submitted that pursuant to the direction of this Court dated 28.08.2020, the dispute between the parties has been amicably settled before the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras. The Mediation Centre has sent a report dated 31.08.2020, enclosing the Memorandum of Compromise dated 29.08.2020 entered into between the parties.

4.Today, when the matter was listed for hearing, the parties namely S.P.Sasi Kumar and J.Banu Priya appeared online along with their respective counsel and confirmed that they have signed the Memorandum of Compromise voluntarily and they are willing to settle the dispute amicably in terms of Memorandum of Compromise. The terms of compromise entered between the parties, dated 29.8.2020 are extracted below :-

(i) The Petitioner and Respondent herein declares that they have No issues out of their wedlock and therefore question of custody of Children does not arise;

(ii) That all articles belonging to each other have been duly exchanged including Gold, Silver and household articles and there is no claim against each other in respect of any articles. The Petitioner and Respondent herein have no claims as against each other regarding their properties both movable and immovable for the past, present and in future hereinafter obtaining the decree of divorce by mutual consent.

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(iii) The Petitioner agreed and paid to the Respondent's permanent alimony, which is quantified at Rs.4,00,000/- (Rupees Four Lakhs only) as a full and final settlement to the Respondent by way of two Demand Drafts viz., (i) bearing No.053952 dated 01.11.2019 for Rs.2,00,000/- (Rupees Two Lakhs only) and (ii) bearing No.054444 dated 18.05.2020 for Rs.2,00,000/- (Rupees Two Lakhs only) totally Rs.4,00,000/- (Rupees Four Lakhs only) both drawn on Standard Chartered Bank, Adayar, Chennai - 600 020, and the Respondent hereby acknowledged, admitted, accepted and acquit the Petitioner and payment of the above sum and both of them hereby agrees that they have no claim against each other henceforth hereafter.

(iv) Apart from the permanent alimony amount detailed above, the Respondent herein has no other claim for maintenance/alimony against the Petitioner and she will not file any other case against him in this regard in future for maintenance, any relief under DVC Act including for Domicile.

5. In view of the Mediation Report dated 31.08.2020 and the Memorandum of Compromise dated 29.08.2020 duly signed by both the parties, the H.M.O.P.No.846 of 2019 pending on the file of the Sub Court, Tambaram, is ordered in terms of compromise. The Registry is directed to issue the decree accordingly. This order shall form part of the Civil Revision Petition which was disposed of on 18.02.2020.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

ms/asi

To

1.The Sub Judge,
Tambaram.

+4cc to M/s.A.M.Amutha Ganesh, Advocate SR.28690

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+2cc to M/s.A.Velmurugan, Advocate SR.28691

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