

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.(PD)No.4186 of 2019

1.S.Ramya

2.V.Raja

... Petitioners

PRAYER : Civil Revision Petition filed under article 227 of the Constitution of India against the order dated 21.11.2019 made in I.A.No.2 of 2019 in H.M.O.P.No.293 of 2019 passed by the learned Subordinate Judge at Kancheepuram.

For Petitioners : Mr.R.Sreenivasan Kirubakaran

ORDER

This Revision has been filed against the order of dismissing the petitioners' application to waive off the colling period of six months to consider the petition filed under Section 13B of the Hindu Marriage Act, seeking divorce on mutual consent.

2.The petitioners are the husband and wife. According to them,

the marriage took place on 18.01.2006 and due to misunderstanding, they have been living separately since from 05.06.2018. Hence, they decided to go for divorce on mutual consent and filed a petition in HMOP.No.293 of 2019 under Section 13B of the Hindu Marriage Act on 04.10.2019. They have also filed an application in IA.No.2 of 2019 in HMOP.No.293 of 2019 under Section 13B(2) of the Hindu Marriage Act to waive off the cooling period of six months. However, the said application was dismissed by the Sub-Court at Kancheepuram. Challenging the same, the present Revision Petition has been filed by both the parties.

3.The learned counsel for the petitioners submitted that the parties have been living separately since from 05.06.2018 and there is no possibility of their reunion and hence, six months cooling period may be waived off by this Court. In support of the said submission, he relied on the decision of the Hon'ble Supreme Court in the case of *Amardeep Singh v. Harveen Kaur in Civil Appeal No.11158 of 2017* rendered on 12.09.2017, wherein, while dealing with the similar application, at paragraph no.18, it has been held 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 13B(2), in addition to the statutory period of one year under Section 13B(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.”

4. Without considering the above referred judgment of the Hon'ble Supreme Court, the Court below has erroneously dismissed the said application on the ground that the chance of reunion would be defeated, if it is allowed. Hence, this Court is inclined to set aside the order impugned herein.

V.BHARATHIDASAN, J.

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5.Accordingly, the Civil Revision Petition is allowed and the order dated 21.11.2019 passed by the Sub Court, Kancheepuram in IA.No.2 of 2019 in HMOP.No.293 of 2019 is set aside. The matter is remitted back to the Court below for fresh consideration. The learned Sub Judge, Kancheepuram is directed to follow the guidelines issued by the Hon'ble Supreme Court in the above referred judgment, while considering the said application and pass appropriate orders, on merits and in accordance with law.

21.01.2020

Index:Yes/No
Internet:Yes
Speaking/Non-speaking order
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To
The Subordinate Court,
Kancheepuram.

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