



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.08.2020

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD) .No.2309 of 2019

1.R.Vignesh

2.S.Rajalakshmi @ Nivetha

... Petitioners/
Petitioners/Petitioners

Vs.

Nil

... Respondent/
Respondent/Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 30.09.2019 passed in I.A.No.2 of 2019 in H.M.O.P.No.143 of 2019 by the Subordinate Court, Aruppukottai.

For petitioners

: Mr.Niranjan S.Kumar

ORDER

This petition has been filed by the petitioners challenging the order refusing to waive the cooling off period of six months passed by the Court below in I.A.No.2 of 2019 in H.M.O.P.No.143 of 2019.

2. The learned counsel for the petitioners submitted that the marriage between the petitioners solemnized on 29.08.2018 and due to difference of opinion, they had no cohabitation and they did not live jointly and peacefully. The petitioners tried to sort out their difference of opinion with the help of elders and waited for more than one year. The parents of both sides and their relatives tried to convince both the petitioners, but the conciliation process was not succeeded and materialized. The petitioners have mutually exchanged their belongings and they also decided not to claim any maintenance in future. The petitioners are separately living along with their parents for the past one year. As they could not arrive at good understanding terms even after one year, they felt that they could not lead the matrimonial life jointly and peacefully and hence, they filed a petition for divorce with mutual consent. After filing the said petition, the petitioners have filed an application to waive the cooling off period of six months and to take the petition for divorce on file.

3. The learned counsel for the petitioners would further submit that the Court below has erroneously dismissed the said petition holding that there is no material or pleadings to show as to whether both the petitioners attended any mediation or counseling and that the condition stipulated in para 19(ii) of the decision of



the Hon'ble Supreme Court in **Amardeep Singh Vs. Harveen Kaur**, reported in **2017 (8) SCC 746** has not been complied with by the petitioners. He would further submit that the cooling off period mentioned in Section 13-B(2) has been incorporated in the Act in order to safeguard the parties from making a hurried decision and the same cannot be shown as a reason to perpetuate a purposeless marriage or to prolong the agony of the parties when the decision is loud and clear and the same is also accepted by both the families. In the present case, even after both the families and the parties themselves have taken a decision to end the marriage, the Court below has erroneously refused to waive the cooling off period and dismissed the application. Thus, he prayed to allow this petition.

4. Heard the learned counsel for the petitioners and perused the records carefully.

5. A perusal of record shows that the marriage between the petitioners was solemnized on 29.08.2018. The petition for divorce along with the application seeking to waive the cooling off period was filed on 23.09.2019. According to the petitioners, they have been living separately for more than one year and that their parents and relatives mediated to sort out their differences, but it could not succeed and therefore, they filed the petition for divorce by mutual consent and that as the conciliation process has already been completed and it was not succeeded, the Court below ought to have waived the cooling off period.

6. In the case of **Amardeep Singh Vs. Harveen Kaur**, reported in **(2017) 8 SCC 746**, the Hon'ble Supreme Court has held that the Court can waive the statutory period stipulated under Section 13-B(2) of the Hindu Marriage Act, on consideration certain parameters. The relevant portions are extracted hereunder:-

'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;

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.

22. Needless to say that in conducting such proceedings the Court can also use the medium of video conferencing and also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reason as may satisfy the Court, to advance the interest of justice.

23. The parties are now at liberty to move the concerned court for fresh consideration in the light of this order.''

7. The main ground on which the Court below has refused to waive the cooling off period is that the condition mentioned in paragraph No.18(ii) of the above decision has not been followed and it is not specifically stated as to whether the petitioners attended any mediation or counseling. In condition No.(ii), it is specifically stated that "all efforts for mediation / conciliation, including efforts in terms of Order XXXIIA Rule 3 C.P.C. / Section 23(2) of the Hindu Marriage 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."

8. Order XXXIIA Rules 3 and 4 of C.P.C reads as follows:

"3.Duty of Court to make efforts for settlement.- (1) In every suit or proceeding to which this order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject matter of the suit.



(2) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-rule(2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.

4.Assistance of welfare expert.- In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promotion the welfare of the family as the Court may think fit, for the purpose of assisting the Court in discharging the functions imposed by Rule 3 of this Order."

9. Section 23(2) and (3) of the Hindu Marriage Act reads as follows:

"23.Decree in proceedings.- (1).... (2) Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case, where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section(1) of Section 13.

(3) For the purpose of aiding the Court in bringing about such reconciliation, the Court may, if the parties so desire or if the Court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court if the parties fail to name any person with directions to report to the Court as to whether reconciliation can be and has been effected and the Court shall in disposing of the proceeding have due regard to the report."

10. Section 9 of the Family Court Act reads as follows:

"9.Duty of Family Court to make efforts for settlement.- (1) In every suit or proceeding,



endeavour shall be made by the Family Court in the first instance where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by the sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceeding."

11. A bare reading of the above provisions would make it clear that in a matrimonial dispute or family dispute, the endeavour of the Court, in the first instance, is to bring about a reconciliation between the parties and for the purpose of aiding the Court in bringing about such reconciliation, the Court may refer the matter to mediation to any person named by the parties in this behalf or to any person nominated by the Court if the parties fail to name. Further, the cooling off period has been effected so as to allow the parties for reconsideration of a decision made in haste, under pressure or due to tense or hostile circumstances.

12. In this case, the petitioners have filed the petition for divorce by consent. The petition for divorce and the application seeking to waive the cooling off period have been filed by the petitioners immediately after one year from the date of their marriage ie., on 23.09.2019. On 30.09.2019, the Court below has dismissed the application seeking to waive the cooling off period. Though the petitioners have stated that they have been living separately for one year and the mediation effected by their parents and relatives could not succeed, admittedly the mediation has not been held before a trained mediators in the Mediation Centre. Any one could say, in a case of this nature, that the mediation has already been effected and it could not succeed. Acceptance of the said averment by the Court, without referring the matter to the Mediation or Conciliation Centre to a trained mediator as mentioned in the provision of law referred to above, would amount to the Court failing in its duty.

13. Further, as rightly held by the Court below, in this case,
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it can be taken that the condition stipulated in paragraph No.18 (ii) of the decision of Hon'ble Supreme Court has not been fulfilled, as the mediation has not been effected before a trained mediator. However, for the said reason, the Court below ought not to have dismissed the application seeking to waive the cooling off period. The Court below itself could have referred the matter to a trained mediator for reconciliation within a stipulated time and thereafter, decided the application based on the report by the Mediator. But, the Court below has failed to do such exercise in this case before deciding the petitioners' application seeking to waive the cooling off period. Though this Court is inclined to set aside the impugned order on the above ground and to remit the matter for deciding the application afresh after getting a report from a trained mediator within a stipulated time, as now almost ten months have gone from the date of filing of the petition to waive the cooling off period and the cooling off period is already over, this Court is only inclined to set aside the impugned order.

14. In view of the above, the impugned order passed by the Court below in I.A.No.2 of 2019 in H.M.O.P.No.143 of 2019 is set aside. As the cooling off period has already been over, the Court below is directed to dispose of H.M.O.P.No.143 of 2019 either through Video Conferencing System or by physical hearing, as early as possible, preferably within a period of four weeks from the date of receipt of a copy of this order.

15. This Civil Revision Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CSII)

// True Copy //

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Sub Assistant Registrar(CS)

gcg

To

1.The Subordinate Judge,
Aruppukottai.

2.The Record Keeper, (2copies)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P (MD) .No.2309 of 2019
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