

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Civil Revision No.915 of 2020

Date of decision: February 07, 2020

Jobanpreet Kaur

...Petitioner

Versus

Jaspinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Ashok Kumar Verma, J.(oral)

The petitioner has preferred this revision petition under Article 227 of the Constitution of India praying for setting-aside the order dated 17.01.2020 (Annexure P-3), passed by Additional Principal Judge, Family Court, Gurdaspur (Camp Court, Batala), whereby application seeking exemption for waiving up statutory period of six months for grant of divorce under Section 13-B of the Hindu Marriage Act has been dismissed.

Notice of motion.

Mr. Sheenam Kamboj, Advocate appears and accepts notice on behalf of the respondent. He also prays for the same relief.

I have considered the submissions made by learned counsel for the parties.

Learned counsel for the petitioner has relied upon the law laid down in *Amardeep Singh vs. Harveen Kaur, 2017(4) R.C.R. (Civil) 608*, wherein the Hon'ble Apex Court has observed that the period mentioned in Section 13-B (2) of the 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 the 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.

The marriage between the parties was solemnized on 22.8.2017 as per Sikh rites and rituals. Since 30.9.2018, they are living separately due to difference in temperament and difference of opinion. They have not lived under the same roof since 30.09.2018 and have decided to part ways with mutual consent. No issue has born out of the wedlock.

Section 13-B (1) of the 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, legal process can be resorted to. Section 13-B (2) of the Act is procedural in nature. The discretion to waive of the period is a guided discretion and that can be exercised by considering different parameters like remote chance of reconciliation and separation of the parties for a longer period as mentioned in Section 13-B (2) of Act. The Court has to see the period for which the parties have been married, duration of their separation, duration of pending litigation and any other pending litigation between them. 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 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 Conciliation Centre have been tried and have failed and there is no chance

of reconciliation, then the Court will come to the aid of the parties in waiving the statutory period of six months.

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.*

In the instant case, the parties have been living separately since 30.09.2018. Reconciliation proceedings have failed. Petitioner has got engaged with one Gurkirat Singh of village Mullanwal, District Gurdaspur. Said Gurkirat Singh is to go abroad and before going abroad, he wants to solemnize marriage with the petitioner. This fact has not been denied by the respondent, rather the application in question was filed jointly. The parties have settled their all disputes and there are remote chances of reconciliation. No issue was born out of the wedlock.

In view of law laid down by the Hon'ble Apex Court in ***Amardeep Singh's*** case (supra) and ***Soni Kumari vs. Deepak Kumar***,

2016(1) R.C.R. (Civil) 52, indulgence can be granted by this Court by directing the trial Court to waive off the statutory period of six months for recording of statement of the parties at second motion and the parties be allowed to part ways in view of divorce by way of mutual consent.

In view of above, the impugned order dated 17.01.2020, passed by the Additional Principal Judge, Family Court, Gurdaspur (Camp Court, Batala) is set aside. This revision petition is allowed. Both the parties are directed to appear before the trial Court for recording their statements in second motion on 17.02.2020.

(ASHOK KUMAR VERMA)
JUDGE

February 07, 2020
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No