

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 2372 of 2020
Date of Decision: 27.10.2020**

Satbir Singh

.....Petitioner

Versus

Kamaljit Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Vaibhav Sharma, Advocate
for the respondent.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

This is a petition under Article 227 of the Constitution of India for setting aside the order dated 18.9.2020 passed by Principal Judge, Family Court, Patiala (Annexure P-5), vide which the application (Annexure P-2) for waiving off the statutory period of six months, has been dismissed.

Learned counsel for the petitioner submits that the marriage of the petitioner was solemnized with the respondent on 15.3.2015 as per Sikh rites and out of the said wedlock, no child was born. He further submits that since the parties could not adjust with each other, they started residing separately since 28.4.2018 and filed a petition under Section 13-B of the Act seeking a decree of divorce by mutual consent, which is pending.

Learned counsel further submits though the cooling off period mentioned Section 13-B(2) of the Hindu Marriage Act, 1955 ('Act' for short) is directory and not mandatory, still it can be waived subject to the

fulfillment of certain conditions. He has relied upon the judgment of the Hon'ble Supreme Court in case *Amardeep Singh versus Harveen Kaur, 2017 (4) R.C.R. (Civil) 608* to contend that the conditions stipulated in the said judgment stand duly fulfilled by the parties. However, the application has been dismissed only on the ground that the condition regarding mediation and conciliation has not been fulfilled by the parties before moving the application for waiving off the cooling off period.

Learned counsel for the petitioner has drawn the attention of this Court towards the order dated 13.7.2019 passed by the Presiding Officer, National Lok Adalat in the case filed by the respondent-wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and submits that the matter was referred to National Lok Adalat, where efforts were made but the compromise could not be effected between the parties and thereafter, they had filed the petition under Section 13-B of the Act, seeking a decree of divorce by way of mutual consent.

Learned counsel for the respondent submits that the application seeking waiving off the cooling period of six months, has been dismissed mainly on the ground that the condition regarding mediation and conciliation has not been fulfilled. He has not disputed the fact that efforts were made before the National Lok Adalat but remained unsuccessful which is evident from the order dated 13.7.2019, reproduced in the petition.

I have heard the learned counsel for the parties and have gone through the paper book as well documents on record.

Before deciding the present controversy, it would be relevant to reproduce Section 13-B of the Act, which reads as under:-

“13-B- Divorce by mutual consent - □

(1) Subject to the provisions of this Act a petition for

dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.*

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

For waiving off the statutory period of six months under Section 13-B(2), the Hon'ble Apex Court in case of **Amardeep Singh's** case (supra) has laid down four conditions which read as under:-

(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 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.”

This Court is convinced that all the conditions including condition No. 2 regarding mediation and conciliation, stand fulfilled as the parties had appeared before the National Lok Adalat in the proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005, where efforts were made to get the matter settled. However, said efforts remained unsuccessful and it was only thereafter, the parties had filed the petition under Section 13-B of the Act seeking a decree of divorce by way of mutual consent.

This Court has also taken into consideration that all the cases pending between the parties i.e. the petition filed by the petitioner under Section 9 of the Hindu Marriage Act as well as the petition filed by the respondent-wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005, have been withdrawn and it was also agreed that the respondent-wife shall also withdraw the petition filed under Section 125 Cr.P.C.

Keeping in view the above, the impugned order dated 18.9.2020 (Annexure P-5) is set aside and consequently, the application seeking waiving off the statutory period of six months, is allowed. Accordingly, the Family Court is directed to decide the petition under Section 13-B of the Act, forthwith.

The petition is allowed.

(HARNARESH SINGH GILL)
JUDGE

October 27, 2020
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No