

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 2485 of 2020
Date of decision: 16.11.2020

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Shama

....Petitioner(s)

and

Sunny Rathore

....Petitioner(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Bhawesh Chaudhary, Advocate,
for the petitioner.

(Proceedings are conducted through video
conferencing as per instructions).

G.S.SANDHAWALIA, J. (Oral)

Challenge in the present revision petition filed under Article 227 of the Constitution of India is to the order dated 20.08.2020 (Annexure P-2) passed by Additional Principal Judge, Family Court, Jalandhar. Vide the impugned order, the application for waiver of the second motion filed jointly by the petitioners has been dismissed. The reasons given vide the impugned order are that no ground was made out for condoning the mandatory period of six months and if one of the parties is going abroad, he could come back or give special power of attorney to anyone in the family. The present petition has been filed by the husband and the wife jointly challenging the same.

Counsel for the petitioner has relied upon the judgment of the Apex Court in *Amardeep Singh vs. Harveen Kaur, 2017 (4) RCR (Civil) 608* to submit that it was a case where the husband was going abroad and that was the reason for filing application for condoning the mandatory period of six months under Section 13-B of the Hindu Marriage Act, 1955

since the case was now listed for 11.02.2020. It is submitted that as per the judgment of the Apex Court also, the waiting period would only prolong their agony and once the parties have settled their dues including alimony, custody of children or any other pending issues between the parties, the application should have been allowed and not rejected.

A perusal of the paper book would go on to show that as per the statements recorded before the Family Court, the parties have two children out of the marriage which was solemnized on 12.07.2009 as per the Sikh rites. They are living separately since 10.02.2017 and their settlements, thus, were recorded in first motion on 27.07.2020. After a month, an application for condoning the mandatory period was filed, which is also in consonance with the terms of the judgment of the Apex Court in *Amardeep Singh's case (supra)*. The Apex Court has held that there was no purpose to perpetuate the purposeless marriage where there is no chance of reconciliation and the agony of parties only gets prolonged.

Counsel for the petitioner has also argued that the sponsorship as such has come from the State of Luxembourg (Europe) and the husband has been granted visa, which is valid till 29.07.2021. It is further submitted that the parties have already agreed regarding the rights of the maintenance of the minor children and possession of the house also has been transferred in favour of the wife and the minor children. It is accordingly argued that the Family Court should have satisfied itself in terms of the judgments of the Apex Court in case it had to dismiss the application for waiver of the period. The Apex Court has held that it is the duty of the Court while dealing with the case it has to be satisfied that a case for waiving the statutory period is made out and the conditions which have to be kept into

consideration have been laid down. It has also come to the conclusion that it is not mandatory but directory and if there is no possibility of parties resuming cohabitation and the chances of alternative rehabilitation, it will be open to the Court to exercise its discretion in the facts and circumstances.

The relevant portion reads thus:-

“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.

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.”

As noticed, the husband has to go abroad and in such circumstances, it would be important for him to snap the link as such with his wife for purposes of immigration and, thus, holding on to the first marriage as such might not prove fruitful for purposes of his immigration.

Resultantly, this Court is of the opinion that the Family Court at Jalandhar has not applied its mind judicially to the controversy in question and the reasoning as such is not in consonance with the judgment of the Apex Court.

Accordingly, the present revision petition is allowed and the order dated 20.08.2020 (Annexure P-2) is set aside. The Family Court at Jalandhar shall take a decision afresh keeping in view the observations made above on the application, within a period of 2 weeks from the date of receipt of certified copy of the order.

16.11.2020
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No