

IN THE HIGH COURT OF PUNJAB AND HARYANA ATCHANDIGARH

CR-2515-2020

Date of Decision: December 02, 2020

KIRAN KAUR

..... Petitioner no.1

And

HARJINDER SINGH

.....Petitioner no.2

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. S.S. Maini, Advocate and
Ms. Harpreet Kaur, Advocate
for the petitioners.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to the outbreak of pandemic, COVID-19.

This revision petition has been filed by Kiran Kaur and Harjinder Singh, challenging order dated 07.10.2020 (Annexure P-1), passed by the learned Principal Judge, Family Court, Faridkot, wherein waiver of statutory period of six months under Section 13(B)(2) of the Hindu Marriage Act, 1955, has not been permitted.

It is submitted that both the parties have been living apart from each other since over two years now and as it was not possible for them to continue with the matrimonial relationship despite best efforts, a petition under Section 13-B of the Hindu Marriage Act was filed on 25.08.2020. Their statements at first motion were recorded on 18.09.2020. An

application was moved for waiving the statutory period of six months for passing of a decree of divorce by mutual consent between the petitioners. It is submitted that, the learned Principle Judge, Family Court, Faridkot, wrongly rejected the same while observing that, *'the waiver cannot be afforded merely on the averments that the parties are living separately from each other since the last about two years and have settled the matrimonial dispute and that no special circumstances are made out in the present case'*.

The parties were directed by this court to join proceedings through video conferencing in this petition. Both Kiran Kaur and Harjinder Singh, duly identified by Mr. S.S. Maini, Advocate, have joined proceedings. Both of them submit that they have been living separately for over two years now. Earnest efforts were made by the parties with the intervention of respectables and elders to settle their matrimonial dispute but unfortunately the matter could not be resolved and now there was no chance of any reconciliation between the petitioners. No effort was spared to explore the possibility of resumption of cohabitation, especially keeping in view the future of the children. It is further stated by them that no other litigation is pending between the petitioners and it has been decided that both children born out of this wedlock would remain in the custody of their father Harjinder Singh. They also state that there are chances of alternate rehabilitation for both of them at this stage.

Learned counsel submit that various Panchayats had been convened at different points of time. Common relatives and respectable had

also made earnest efforts to help the parties resume cohabitation but to no avail. The parties, it is stated have genuinely settled their differences and wish to part ways. Furthermore the waiting period would only prolong their agony and may hamper their alternative rehabilitation. It is thus prayed that this petition be allowed.

The Hon'ble Supreme Court in ***Amardeep Singh Vs. Harveen Kaur, 2017(4) RCR (Civil) 608***, has observed that a Court while dealing with a matter to decide whether a case is made out to waive the statutory period, under Section 13-B(2) of the Hindu Marriage Act, 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.*

It is specifically observed that the period mentioned in Section 13(B)(2) of the Act, is not mandatory but directory and it is open to the Court to exercise its discretion in the facts and circumstances of each case

where there is no possibility of parties resuming co-habitation and there are chances of alternate rehabilitation.

In my considered opinion, the present case squarely falls within the parameters as laid down by the Hon'ble Supreme Court in *Amardeep Singh's* case (Supra). Accordingly, order dated 07.10.2020 (Annexure P-1), passed by the learned Principal Judge, Family Court, Faridkot, is set aside and statutory period of six months is waived. The parties are accordingly directed to approach the learned Principal Judge, Family Court, Faridkot, for proceeding in accordance with law after waiver of statutory period of six months.

The petition is accordingly disposed of.

02.12.2020

Sunil

(LISA GILL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No