



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.100 of 2021

1. Jaishankar
2. Usharani

... Revision Petitioners/Petitioners

-Vs-

Nil

...Respondents/Respondents

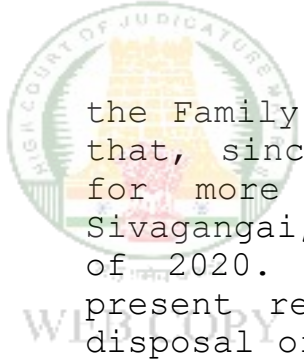
Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to issue direction to waive off the cooling period and to dispose the petition filed by the revision petitioners in O.P.No.223 of 2020 pending on the file of the learned Judge, Family Court, Sivagangai at once.

For Petitioner : Mr.P.Ganapathi Subramanian

O R D E R

This Civil Revision Petition has been filed seeking a direction to waive off the cooling period and to dispose the petition filed by the revision petitioners in O.P.No.223 of 2020 pending on the file of the learned Judge, Family Court, Sivagangai.

2. Brief facts of this case are that the revision petitioners/petitioners had preferred a petition on the file of the Family Court, Sivagangai under 13(B) of the Hindu Marriage Act,1955. The marriage between the revision petitioners was solemnized on 25.05.2001 as per the Hindu rites and customs and out of the wedlock, they had two daughters namely Jeyavarshini and Jeyadharshini. The said Jeyadharshini died due to illness. Thereafter, due to dispute between the revision petitioners, they were living separately for the past 13 years and they have mutually agreed to dissolve their marriage. The second revision petitioner has filed C.A.No.74 of 2018 and the same is pending on the file of the Additional District Court, Sivagangai. The 1st revision petitioner entered into a compromise and agreed to return all the jewels and also agreed to pay a sum of Rs.10,00,000/- towards maintenance to the second revision petitioner and their daughter Jeyavarshini. Subsequently, the 1st revision petitioner has filed a divorce petition in O.P.No.223 of 2020 on the file of



the Family Court, Sivagangai. The grievance of the petitioners are that, since the revision petitioners are being living separately for more than 13 years, the learned Judge, Family Court, Sivagangai, ought to have disposed of the petition in O.P.No.223 of 2020. Hence, the petitioners are constrained to move the present revision petition before this Court for getting speedy disposal of the petition in O.P.No.223 of 2020.

3. Heard the learned Counsel for the revision petitioners and perused the materials placed before this Court.

4. Learned Counsel appearing for the revision petitioners after narrating the aforesaid facts in a nutshell, has relied upon the decision of the Hon'ble Apex Court in **Amardeep Singh Vs. Harveen Kaur**, reported in **(2017) 8 SCC 746**. The relevant paragraphs are extracted hereunder:-

"18. In determining the question whether provision is mandatory or directory, language alone is not always decisive. The Court has to have the regard to the context, the subject matter and the object of the provision. This principle, as formulated in Justice G.P. Singh's "Principles of Statutory Interpretation" (9th Edn., 2004), has been cited with approval in *Kailash versus Nanhku* as follows: (SCC pp.496-97, para 34)

"34... The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage Lord Campbell said: 'No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered.'

" 'For ascertaining the real intention of the legislature', points out Subbarao, J. 'the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited



by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered'. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory."

19. 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.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. 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.

20. 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.

21. 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.

22. The parties are now at liberty to move the concerned court for fresh consideration in the light of this order. The appeal is disposed of accordingly."

5. Admittedly in the present case, the petitioners are separated for 13 years and it is also state that they have entered into a compromise. Considering the above decision of the Hon'ble Apex Court and the present facts and circumstances of the case, the learned Judge, Family Court, Sivagangai, is directed to waive the cooling period and dispose of the petition in O.P.No.223 of 2020, on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

6. With the above direction, this Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The Presiding Judge,
Family Court, Sivagangai.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai(2 copies).

COPY TO

The Registrar (Judicial),
Madurai Bench of Madras High Court,Madurai.

C.R.P. (MD) No.100 of 2021
01.02.2021

VR(CO)

TR(12.02.2021) 4P 5C