



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2021

CORAM

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THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

C.R.P. (MD)No.258 of 2021

Revathi

... Petitioner/Petitioner/
2nd Petitioner

Vs.

Kanagasabhapathy

... Respondent/Petitioner/
1st Petitioner

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 01.02.2021 passed by the Sub-Court, Kovilpatti and to direct the Sub-Court, Kovilpatti to number the un-numbered I.A.No. of 2021 in H.M.O.P.No.174 of 2020.

For Petitioner

: Mr.P.Subbaraj

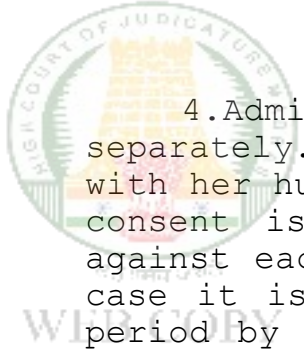
ORDER

This civil revision petition has been filed to set aside the order dated 01.02.2021 passed by the Sub-Court, Kovilpatti and to direct the Sub-Court, Kovilpatti to number the un-numbered I.A.No. of 2021 in H.M.O.P.No.174 of 2020.

2.The learned counsel appearing for the petitioner would submit that the marriage of the petitioner and the respondent was solemnized on 23.05.2019. Thereafter, due to matrimonial dispute the petitioner and the respondent are living separately till date. The petitioner received all the jewels and cash given to the respondent at the time of marriage and the petitioner did not claim any permanent alimony from the respondent herein. The grievance of the petitioner is that both of them filed divorce petition under Section 13B of the Hindu Marriage Act, 1955 and the same was adjourned 07.06.2021. Therefore, the petitioner filed a petition to advance the hearing. However, the papers were returned without any reason. Therefore, the petitioner is before this Court to number the above I.A and advance the hearing.

3.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

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4. Admittedly, the petitioner and the respondent are living separately. It is also an admitted fact that the petitioner lived with her husband for a few days. The petition for divorce on mutual consent is pending from 2020 onwards. There is also no claim against each other. Considering the facts and circumstances of the case it is always open to the Court to dispense with the cooling period by applying the principles in the reported judgment of the Apex Court in **(2017) 8 SCC 746, Amardeep Singh Vs. Harveen Kaur**, wherein it is stated as follows:

'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.

22. 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.



23.The parties are now at liberty to move the concerned court for fresh consideration in the light of this order.''

5.Therefore, the petitioner came up with the above petition to number the above said I.A., to advance the hearing. Considering the facts and circumstances of the case, the learned Sub Court, Kovilpatti is directed to advance the hearing and dispose of the above divorce petition in H.M.O.P.NO.174 of 2020, within a period of four weeks from the date of receipt of a copy of this order.

6.With the above observations, this civil revision petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gns

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To
The Sub-Judge,
Kovilpatti.

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

+1 CC to M/s.P.SUBBARAJ, Advocate (SR-6510[F] dated 22/02/2021)

C.R.P. (MD) No.258 of 2021
19.02.2021

TP (CO)
KK(29.03.2021) 3P 4C

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