

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**CIVIL REVISION PETITION No.1549 of 2021****ORDER:**

This Civil Revision Petition is filed against order dated 05.08.2021 in I.A.No.162 of 2021 in FCOP No.351 of 2021, wherein and whereby the Court below dismissed the application filed under Order 109(2) of Civil Rules of Practice for advancement of the matter for dispensing with the cooling period of six months for applying divorce on mutual consent.

Learned counsel for the parties submits that after the marriage, the 1st petitioner joined the matrimonial house of the 2nd petitioner and they lived happily for a period of three months i.e., till May, 2020. Thereafter, due to serious differences arose between them, the 1st petitioner abruptly left the matrimonial house in the month of May, 2020. Efforts made by the elders of both the parties failed and the marriage has been broken down irretrievably and that there is no chance for reunion between them, as such, they decided to dissolve their marriage by mutual consent before the Judge, Family Court and accordingly, they filed FCOP No.351 of 2021 for divorce by mutual consent. He also submits that along with FCOP, they both filed two interlocutory applications i.e., I.A.No.162 of 2021 for advancement of the FCOP and I.A.No.163 of 2021 regarding the waiving of Cooling of period. In the affidavit filed in support of I.A.No.162 of 2021, it is categorically mentioned that both the petitioners 1 and 2 are living separately since May, 2020 to till date and the cooling of period to be relaxed and also it is pleaded

that there is no possibility of reunion between the petitioners and also both parties agreed to advance the matter for the purpose of waiting of cooling of period. He also submits that the 2nd petitioner more specifically stated about his going to Australia and settle there. He submits that without considering all these aspects, the trial Court dismissed the application. He also submits that both the parties entered into a Memorandum of Understanding on 12.05.2021 settling all the disputes and a joint affidavit is also filed on 29.10.2021, as such, no useful purpose will be served in waiting for the cooling period. In support of his contention, he relied on the judgment reported in **Amardeep Singh v. Harveen Kaur (2017 (8) SCC 746)** and also judgment of learned Single Judge of Punjab and Haryana High Court in CR No.2199 of 2020, dated 02.09.2020.

In this case, it is to be seen that the both the parties are present physically on 01.11.2021 in the court and both of them have agreed for divorce on mutual consent and in pursuance of the same, a memorandum of understanding was also entered on 12.05.2021 and a joint affidavit is also filed on 29.10.2021 settling all the disputes stating that there is no chance of resumption of cohabitation and conjugal relationship. They also submit that they are unable to live together and there are no chances of reunion and they both could not reconcile themselves for leading happy marital life. The Hon'ble Supreme Court in **Amardeep Singh** (supra) observed as follows:

“14. The Court must be satisfied that the parties were living separately for more than the statutory period and all efforts at

mediation and reconciliation have been tried and have failed and there is no chance of reconciliation and further waiting period will only prolong their agony.”

By following the aforesaid principle of law, a learned Single Judge of Punjab and Haryana High Court in CR No.2199 of 2020, observed the waiting period mentioned in Section 13-B(2) of the Act of 1955 is not mandatory and only directory. It was observed that it would be open to the Court to exercise its discretion on the strength of the facts and circumstances of the individual case and waive the statutory period. Broadly, such waiver can be considered if : (i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year separation of parties under Section 13-B(1) is already over before the first motion itself; (ii) All efforts for mediation/conciliation to reunite the parties have failed and there is no likelihood of success in that direction by further efforts; (iii) the parties have genuinely settled their differences, including alimony, child custody or other pending issues and; (iv) the waiting period will only prolong their agony. In the said case, it is also observed that the petitioners have executed a memorandum of understanding settling all issues and are educated and that they would therefore be presumed to know as to what would be in their best interest.

In view of the principle laid down in the aforesaid judgment and also the facts and circumstances of the case, this Court is of the considered opinion that no useful purpose

will be served in insisting the parties to wait for cooling period, which is meant for reconciliation. All efforts made by both the parties and also an attempt made by this Court did not bear any fruitful results. In view of the same, the impugned order dated 05.08.2021 in I.A.No.162 of 2021 is set aside and the Court below is directed to advance the FCOP and proceed further, without insisting the parties for cooling period.

Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

A.RAJASHEKER REDDY, J

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kvs

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