

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

CR-03-2021 (O&M).
Date of Decision:-07.01.2021.

Rekha

..... Petitioner No.1.

and

Ram Raj

..... Petitioner No.2.

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Umesh Aggarwal, Advocate for the petitioners.

SANJAY KUMAR, J. (Oral)

The petitioners are wife and husband. They are aggrieved by the order dated 09.11.2020 passed by the learned Additional Principal Judge, Family Court, Amritsar, rejecting their request for waiver of the statutory period of six months to record their second motion statements in HMA Petition No.1199 of 2020, a petition filed by them under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act of 1955'), seeking dissolution of their marriage by way of a decree of divorce on the ground of mutual consent.

The petitioners got married on 28.11.2011 and a daughter was born to them on 27.11.2015. They separated in June, 2017 and have not

been living together since then. Efforts at reconciliation made by family members and relations having failed, they decided to dissolve their marriage by way of mutual consent Divorce Petition No.1199 of 2020 on 17.09.2020 before the Family Court at Amritsar. Their first motion statements were recorded by the learned Additional Principal Judge, Family Court, Amritsar on 18.09.2020 and the matter was adjourned to March, 2021. Thereafter, they made a joint application seeking waiver of the statutory period of six months but the same came to be dismissed *vide* the order under revision.

The grounds cited by the petitioners for seeking such waiver were as follows:- The husband is residing in a rented accommodation while the wife is living in the matrimonial home. As per the settlement arrived at by and between the parties, the husband is to pay a sum of ₹ 7,00,000/- to his wife and daughter. This payment is to be made when the wife delivers vacant possession of the matrimonial home at Amritsar which is in her occupation. The husband's father is stated to be an aged person suffering from heart disease and as the husband was being asked to vacate the rented accommodation, his father would also be put to inconvenience. Further, the wife stated that she had no source of income and she was finding it difficult to take care of her minor daughter during these trying times.

These being the grounds cited by the parties, the Family Court baldly stated that there was nothing to show that the parties were involved in previous matrimonial litigation and therefore, efforts for reconciliation had to be made as they had a daughter of tender age. In effect, none of the grounds cited by the petitioners were even taken into consideration.

It may be noted that in *Amardeep Singh Vs. Harveen Kaur [(2017) 8 SCC 746]*, the Supreme Court held that 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 of separation of parties under Section 13-B(1) is already over before the first motion itself; (ii) All efforts for mediation/conciliation to re-unite 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.

This Court is informed that both the petitioners are educated and there is no dispute so far as the custody of their minor daughter is concerned. They also seem to have come to a financial settlement for the future needs of the wife and daughter. In such circumstances, when it is not in dispute that they have been living separately since June, 2017, the assertion of the Family Court that a further effort should be made at reconciliation, does not serve any purpose. The parties are presumed to know as to what would be in their best interest after this long lapse of time.

On the above analysis, this Court finds that the case on hand was a fit one for the learned Additional Principal Judge, Family Court, Amritsar, to exercise his discretion in favour of the parties, in terms of the

law laid down by the Supreme Court in **Amardeep Singh**, referred to *supra*, and waive the waiting period.

The revision is accordingly allowed setting aside the order dated 09.11.2020 passed by the learned Additional Principal Judge, Family Court, Amritsar, in CIS No. CM-338 of 2020. In consequence, the statutory waiting period six months shall stand duly waived. The parties are at liberty to approach the learned Additional Principal Judge, Family Court, Amritsar, for advancement of their case, on the strength of this order, and seek appropriate further orders.

No order as to costs.

(SANJAY KUMAR)
JUDGE

January 07, 2021.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.