

CR-111 of 2021 (O&M)

Date of Decision: 09.02.2021.

Ankur

...Petitioner No.1

And

Sangeeta

....Petitioner No.2

CORAM: HON'BLE MR JUSTICE ARUN MONGA

Present : Both the petitioners in person with
Mr. S.K. Bhorla, Advocate.
(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

1. Petitioners herein, currently husband and wife but having amicably decided to dissolve their marriage by mutual consent under Section 13-B of the Hindu Marriage Act, are aggrieved against an order dated 04.12.2020 (Annexure P-4), passed by Family Court, whereby, their joint application for waiver of statutory period of 06 months has been dismissed.

2. Succinct factual round up first. Marriage between the petitioners was solemnized on 23.01.2013 according to Hindu Rites. They are blessed with a male child on 03.06.2014, born out of the said wedlock. However, due to temperamental differences, their marriage fell on the rocks and since 07.04.2017, they have been living separately. There being no chance of reconciliation, despite efforts, after a period of more than three and half years of separation, petitioners filed a joint petition for dissolution of their marriage by way of mutual consent on 01.12.2020. All the disputes pertaining to their matrimonial life have been settled. Wife/Petitioner No.2 on her free volition accepted Rs.7 lacs towards permanent alimony. She has willingly agreed that custody of child shall remain with father/petitioner

No.1. At the time of hearing of the first motion on 04.12.2020, their joint statement on oath has also been recorded as per aforesaid mutual terms.

3. Notwithstanding, their an application for waiver of statutory period of six months has been dismissed by the Family Court vide impugned order dated 04.12.2020 (Annexure P-4).

4. For clarity of any doubts and to make one more attempt to jointly convince both the petitioners to undergo the cooling off period of 6 months, lest they regret later, they were asked to be personally present through video conference.

5. I have heard learned counsel for the petitioners and both the petitioners in person.

6. Learned counsel for the petitioners submits that the Court below has not appreciated the facts and circumstances of the case in its right perspective. Once the parties have amicably consented to part their ways, they cannot be forced to wait for another six months, is the contention. Counsel contends that given the peculiar circumstances of the case, both the petitioners ought to have been exempted from the period of six months for recording of their second statement.

7. After discord, parties are already residing separately since 07.04.2017. They are very firm that their differences are irreconcilable and for their mutual happiness they need to move on. No other proceedings are pending between the them. Earlier mediation/ conciliation between them has yielded in futility.

8. Even now, the parties have reiterated their decision to part ways amicably out of their free will and without any duress or coercion. Petitioner No.2 admits receipt of an amount of Rs.7 lacs from petitioner No.1 as her

permanent alimony. She is agreeable that interest and welfare of minor child would be better looked after in case his permanent custody is given to petitioner No.1.

9. As per mutual compromise between the parties, all issues regarding permanent alimony and custody of the child have been taken care.

10. In the overall premise, as aforesaid, read with averments made in the petition, I am of the view that the strict approach of the Court below in the present case, to insist for envisaged waiting period of six months for second motion, can be dispensed with. Reliance may also be had on the parameters enunciated by Apex Court in case titled as “Amardeep Singh v. Harveen Kaur”¹. There seems to be irretrievable break down of marriage between the parties herein. They have decided to part their ways amicably. In the circumstances, opportunity to live their lives in the manner they like, including remarriage, should not be denied any further to them. In the peculiar facts, the revision petition is allowed. Consequently, order dated 04.12.2020 (Annexure P-4) is set-aside.

11. Resultantly, the concerned Principal Judge, Family Court shall entertain the joint petition filed by the petitioners under Section 13-B of HMA by waiving off six months period and proceed with the petition by recording their respective statements and dispose of the petition on merits, in accordance with law.

February 09, 2021
Jiten

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No