

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.265 of 2021 (O&M)

Reserved on: 31.03.2021

Date of decision: April 08, 2021

Balrajbir Singh

.....Petitioner No.1

AND

Deepshikha Kalyan

.....Petitioner No.2

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Raghav Gulati, Advocate for petitioner No.1.

Petitioner No.2 herself through Video-Conference.

MAHABIR SINGH SINDHU, J

Present petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 01.12.2020 (P-6) passed by the learned Principal Judge, Family Court, Ludhiana (for short 'Family Court'), whereby joint application of the parties for seeking waiver of second motion under Section 13-B (2) of the Hindu Marriage Act, 1955 (for short 'Act') was rejected.

Brief facts are that marriage between petitioners No.1 & 2 was solemnized on 31.05.2014 by way of Anand Karaj ceremony at Royal Castle Marriage Palace, Village Gulhal, near Samrala, District Ludhiana. Parents of petitioner No.2 spent an amount of ₹20,00,000/- (Rupees Twenty Lacs) at the time of marriage and also entrusted a large number of dowry articles to petitioner No.1 as well as his family members. Parties cohabited at Moga, but no child is born from the wedlock upto date. Due to temperamental differences, parties were not able to live together and started residing separately since 26.11.2014. Petitioner No.1 filed divorce petition under Section 13 of the Act, which was dismissed on

23.07.2019. Petitioner No.2 had also filed a petition under Section 9 of the Act seeking restitution of conjugal rights and that was allowed on 23.07.2019. Aggrieved against both the above judgments, petitioner No.1 filed two separate FAOs, i.e. FAO No.5250 of 2019 & FAO No.5317 of 2019, respectively, but ultimately, the same were ordered to be dismissed as withdrawn on 28.01.2021.

In view of the protracted litigation, there remained no chance for re-consideration and ultimately, parties decided to dissolve their marriage by way of mutual settlement. Consequently, both sides entered into Memorandum of Settlement dated 16.10.2020 (P-3). Petitioner No.1 returned all the articles to petitioner No.2, which were given at the time of marriage and the same was duly acknowledged by her. Thereafter, joint petition under Section 13-B of the Act was filed before the learned Family Court on 23.10.2020 seeking dissolution of marriage with consent, in which statements of parties were recorded in terms of first motion, on 26.10.2020 and the matter was adjourned for 27.05.2021.

A joint application seeking waiver of second motion was filed, but the same was rejected by learned Family Court while passing the impugned order dated 01.12.2020 (P-6). Hence, the present petition.

It is contended by learned counsel for petitioner No.1 that parties are living separately since 26.11.2014; despite their best efforts, there is no chance to live together and ultimately, they have mutually agreed for dissolution of the marriage. Also contended that petitioner No.1 has undertaken to give an amount of ₹20,00,000/- (Rupees Twenty Lacs) to petitioner No.2 as full and final settlement towards permanent alimony and out of which ₹10,00,000/- (Rupees Ten Lacs) has already been paid to her by way of demand draft No.896031 dated 15.10.2020 at the time of recording the statements for first motion on 26.10.2020. Further

contended that remaining amount of ₹10,00,000/- (Rupees Ten Lacs) is to be paid to petitioner No.2 after recording the second motion and waiting till 27.05.2021 will only prolong their agony. In support of the above contentions, reference is made to the judgment of Hon'ble Supreme Court titled **Amardeep Singh versus Harveen Kaur**, (2017) 8 Supreme Court Cases 746.

Petitioner No.2 has also fully supported petitioner No.1 while submitting that impugned order be set aside and waiver for second motion be granted in view of the facts and circumstances of the case.

Heard parties and perused the paper-book.

Hon'ble Supreme Court in **Amardeep Singh's case** (supra), while dealing with an identical point, in Para-19, held as under:-

“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 13-B(2), it can do so after considering the following:

- i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(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 32-A 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 court concerned.”

It is an admitted position that marriage was solemnized between the parties on 31.05.2014 and they are living separately since 26.11.2014. Parties are not able to live together; nor there is any chance for reconciliation despite their best efforts to reunite them and they have mutually agreed for dissolution of marriage on the basis of genuine Memorandum of Settlement dated 16.10.2020 (P-3). Also necessary to mention here that statements of parties have already been recorded under first motion on 26.10.2020 and relevant part thereof, read as under:-

Petitioner No.1-Balrajbir Singh: -

“Stated that I tender my affidavit Ex.PW1/A in my evidence. The copy of my Aadhar card is Mark A, copy of memorandum of settlement is Mark D on the record. I have given a demand draft dated 15.10.2020 for the sum of Rs.10,00,000/- to the petitioner no.2 as per settlement and the copy of the same is Mark E on the record. My petition may kindly be accepted and my marriage may kindly be dissolved with petitioner no.2 as per compromise. I was born on 31.1.1989 as referred in my Aadhar Card.”

Petitioner No.2-Deepshikha Kalyan: -

“Stated that I tender my affidavit Ex.PW2/A in my evidence. The copy of my Aadhar card is Mark B, copy of my PAN Card showing my complete date of birth is Mark C, copy of memorandum of settlement is Mark D on the record. I have received a demand draft dated 15.10.2020 for the sum of Rs.10,00,000/- from petitioner no.1 as per settlement and the copy of the same is Mark E on the record. My petition may kindly be accepted and my marriage may kindly be dissolved with petitioner no.1 as per compromise. I was born on 8.4.1991 as referred in my PAN Card.”

Above statements clearly reveal that matter has been amicably settled and petitioner No.1 has already handed over a demand draft of ₹10,00,000/- (Rupees Ten Lacs) to petitioner No.2, which is duly acknowledged by her.

Thus, in the opinion of this Court, delay in prolongation of the proceedings for dissolution of marriage between the parties would certainly add to their miseries and will not serve any purpose. However, learned Family Court while rejecting the request for waiver of second motion, failed to consider the above aspect of the matter and passed the impugned order without due application of mind; thus, the same is indefensible in law.

As a result thereof, this Court has no option except to allow the petition. Consequently, revision petition is allowed; impugned order dated 01.12.2020 (P-6) is set aside. Learned Family Court is directed to pass the fresh order regarding waiver of second motion, in accordance with law, expeditiously; but, not later than two weeks from the date of receipt of certified copy of this order.

(MAHABIR SINGH SINDHU)
JUDGE

April 08, 2021
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No