

**218 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**C.R. No. 1887 of 2021.
Date of Decision: 07.12.2021.**

Ravina

.....Petitioner No.1

AND

Abhijeet Khipal

.....Petitioner No.2

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Inderjit Sharma, Advocate,
for the petitioners.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Article 227 of the Constitution for setting aside the impugned order dated 17.08.2021 (P-6) passed by learned Additional Principal Judge, Family Court, Bathinda (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.

2. Brief facts are that marriage between petitioners No.1 & 2 was solemnised on 08.06.2018 according to Sikh rites and ceremonies at Bathinda. They cohabited and resided together at Jaipur and no child was born out of wedlock. Petitioners have been residing separately for the last more than one year on account of temperamental differences and now decided to dissolve their marital tie with mutual consent.

3. As per the compromise, petitioner No.2-husband is to pay Rs.7,00,000/- to petitioner No.1-wife and she has received gold ornaments as well as Rs.2,00,000/- from petitioner No.2. A joint petition for divorce by

mutual consent was filed; after recording first motion, both sides made statements that they have settled the matter and withdrew the petition as both tried to live together, but in vain.

4. Now again petition under Section 13-B of the Act for divorce by mutual consent is filed. Statements of parties were recorded on 19.07.2021; but the matter was adjourned by learned family Court for 21.01.2022 despite the fact that a joint application seeking waiver of second motion was filed. Learned Court below rejected the waiver of second motion while passing the impugned order dated 17.08.2021 (P-6). Hence, the present petition.

5. It is contended by learned counsel for the petitioners that they have been living separately for the last more than one year. Petitioners could not pull on their matrimonial relations due to temperamental difference. Despite best efforts, they have failed to reconcile and decided to dissolve marital tie with mutual consent. Also contended that as per the terms of compromise, petitioner No.2-husband is bound to pay Rs.7,00,000/-to petitioner No.1-wife. She has already received gold ornaments and Rs.2,00,000/- from petitioner No.2.

6. Heard learned counsel for the petitioners and perused the paper-book.

7. Hon'ble Supreme Court in para 19 of **Amardeep Singh versus Harveen Kaur'** (2017) 8 Supreme Court Cases 746 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.”

8. It is an admitted position that marriage was solemnised between the parties on 08.06.2018 and they have been living separately for the last more than one year. Petitioners are not able to live together; nor there is any chance for reconciliation despite their best efforts and now mutually agreed for dissolution of marriage on the basis of genuine compromise. Also necessary to mention here that although earlier petition for dissolution of marriage by mutual consent was withdrawn and parties tried to live together; but they could not pull on the relationship. It is necessary to mention here that statements of parties have already been recorded vide first motion on 19.07.2021 and relevant part thereof reads as under:-

Petitioner No.1-Abhijeet Khupal:-

“Now we have settled all our claims and we have compromised with the intervention of relatives and friends and we have settled all our claims against each other. As per compromise lump sum Rs.7,00,000/- will be given to the petitioner No.2 by me and will also be handed over to petitioner No.2 by me 105 gram gold ornaments and today I have paid Rs.2,00,000/- to co-petitioner in the court and also petitioner No.2 received the gold ornaments from me and remaining Rs.5 lacs will be kept with Sh. Gurdeep Singh son of Sh. Balvir Singh resident of Bathinda as security and the said amount will be paid to petitioner No.2 at the time of the final statement of the petition as lump sum amount of co-petitioner as total expenses full and final maintenance and permanent

alimony for past, present and future. I handed over all the articles which were belongs to co-petitioner and now nothing is pending against each other. I will not initiate any civil/criminal litigation against the petitioner No.1 in future nothing is pending any civil or criminal litigation between us. Previously, I along with petitioner No.2 has filed petition u/s 13-B before this Hon'ble court and the same was withdrawn on second motion dated 06.07.2020 due to compromise, copy of order dated 06.07.2020 attached with the petition is Ex P3. The petition may kindly be allowed as prayed for in the headnote of the petition and as well as prayed in all the paras of the petition. My duly sworn affidavit is Ex.P1."

Petitioner No.2-Ravina

"Now we have settled all our claims and we have compromised with the intervention of relatives and friends and we have settled all our claims against each other. As per compromise the petitioner No.1 is bound to pay Rs.7,00,000/- and is also bound to handover me 105 gram gold ornaments. Today I have received Rs.2,00,000/- from co-petitioner in the court and also petitioner No.1 handed over the gold ornaments to me and remaining Rs.5 lacs will be kept with Sh. Gurdeep Singh son of Sh. Balvir Singh resident Bathinda as security and the said amount will be given to me at the time of the final statement of the petition as lump sum amount from co-petitioner as total expenses full and final maintenance and permanent alimony for past, present and future. I have received all the articles which were belongs to me from co-petitioner and now nothing is pending against each other and no civil and criminal litigation is pending between us. I shall not claim any rights in co-petitioner property. I will not initiate any civil/criminal litigation against the petitioner no.1 in future. Previously, I along with petitioner No.1 has filed petition u/s 13-B before this Hon'ble court and the same was withdrawn on second motion dated 06.07.2020 due to compromise, copy of order dated 06.07.2020 attached with the petition is Ex P3. The petition may kindly be allowed as prayed for in the head note of the petition and as well as prayed in all the paras of the petition. My duly sworn affidavit is Ex.P2."

9. Above statements clearly reveal that matter has been amicably settled and petitioner No.2-husband was bound to pay Rs.7,00,000/- to petitioner No.1-wife. She has already received gold ornaments and Rs.2,00,000/- from petitioner No.2.

10. Thus, in the opinion of this Court, parties have amicably settled the matter for separation. Delay in prolongation of the proceedings for dissolution

of marriage between them 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 this aspect of the matter and thus, the same is indefensible in law.

11. As a result thereof, this Court has no option except to allow the present petition. Consequently, revision petition is allowed; impugned order dated 17.08.2021 (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.

07.12.2021.

SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable: Yes/No