

Sr. No. 113

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

CR No.1845-2021

Date of decision: 27.10.2021

Davinder Singh

Petitioner No.1

And

Gulnaz Kaur

Petitioner No.2

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Judgepreet Singh Warring, Advocate,
for both the petitioners along with
Petitioners in person.

(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

This is a joint petition filed by both husband and wife under Article 227 of Constitution of India seeking to set aside an order dated 16.08.2021, passed by Learned Principal Judge, Family Court, Bathinda whereby, application for waiver of statutory period of 06 months filed in a petition under Section 13-B of the Hindu Marriage Act, 1955 has been dismissed. Reliance is placed on the guidelines laid down by Supreme Court in case titled as “**Amardeep Singh vs. Harveen Kaur, 2017 (8) SCC 746**”.

2. Marriage of the parties herein was solemnized on 05.09.2017 at Bathinda. The parties cohabited as husband and wife on for few months, where after wife left for Canada . Later, due to

temperamental differences, they decided to separate from each other sometime in September, 2019.

3. Having failed to reconcile, despite efforts, the parties filed a joint petition for dissolution of their marriage by way of mutual consent, under Section 13-B of HMA before the Family Court. All the disputes pertaining to their matrimonial life have already been amicably settled between the parties. At the time of first motion hearing of the case on 28.07.2021, their statements were also recorded and the case was adjourned for second motion hearing on 01.02.2022.

4. During the interregnum of taking up of the second motion hearing, both the parties moved an application for waiver of statutory period of six months, which has been dismissed by the Family Court vide impugned order dated 16.08.2021.

5. Learned counsel for the petitioners submits that the Court below has not appreciated the facts and circumstances of the case in the right perspective, while declining waiver of the period of 6 months. Once the parties have amicably consented to part their ways, they cannot be forced to wait for another six months, is the contention. Counsel relies on judgment rendered by Supreme Court in case titled as “Amardeep Singh v. Harveen Kaur (supra)”, to contend that given the peculiar circumstances of the case, both the petitioners ought to have been exempted from the period of six months for recording their second statement. The joint application filed by them ought to have been allowed in terms of the judgment, *ibid*.

6. Having personally interacted with the parties through video conference, I am of the view that parties are well educated, aware of their rights and they have very consciously taken steps to mutually part ways in the interest of better future and a happier disposition in life. In the premise, no useful purpose would be served to unnecessarily force them to wait for six months. That apart, petitioner No.1-husband on the one hand, states that because of his current marital status, he is unable to plan his future as he intends to move to Australia and is completely at a loss to plan his movement. While petitioner No.2-wife also states that marriage is since irretrievably broken, she also intends to move on and has no plan to relocate to India and her future plans are also on hold due to forced continuation of her marital status. She submits that due to COVID-19 restrictions, she is unable to take flight to come to India to personally pursue her matrimonial proceedings and for the purpose, has given Special Power of Attorney to her father, who is to join her to live in Canada but he is currently held up to forcibly stay in India due to pendency of the proceedings before the Family Court.

7. Keeping in view the averments made in the petition and in view of the ratio in Amardeep Singh' case (supra), the approach adopted by the Court below in the present case, to insist waiting period of six months for second motion, was thus uncalled for. The marriage between the parties has irretrievably broken. They have decided to part their ways amicably. Opportunity to live their lives in the manner they like, cannot be denied. In the peculiar facts herein, insisting to wait to another six months would result in adding to their woes. Both of them seem to have

settled their disputes without any duress or pressure with a tranquil state of mental dispensation.

8. Consequently, the revision petition is allowed and order dated 16.08.2021 is set-aside. The Principal Judge, Family Court, Bathinda, 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 respective statements of parties and dispose of the petition on merits, in accordance with law.

9. Parties are at liberty to appear in person or through 'Power of Attorney' before the Family Court on 30.11.2021 or any later date.

27.10.2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No