

Sr. No. 115

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

CR No.2287-2021

Date of decision: 12.10.2021

Bhupinder Singh

Petitioner No.1

And

Amandeep Kaur

Petitioner No.2

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sahil Goel, 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 08.09.2021 (Annexure P-6), passed by Learned Principal Judge, Family Court, Kharar whereby, application for waiver of statutory period of 06 months filed in apetition 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 v. Harveen Kaur, 2017 (8) SCC 746**”.

2. Succinctly, brief facts of the case first. Marriage of the parties herein was solemnized on 18.03.2019 at village Singa Devi, Tehsil Kharar, District Mohali according to Sikh Rites. The parties cohabited as husband and wife. However, due to temperamental differences, they started living separately since 18.05.2019.

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 04.08.2021, their statements were also recorded and the case was adjourned for second motion hearing.

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 08.09.2021 (Annexure P-6).

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 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, particularly when the said wait may turn out to be adversarial qua the future prospects of the co-petitioner wife, with whom as already noted I have

interacted and on a Court query she has confidently stood by her first motion. She reiterates the same stand in person even today as taken in the first motion and states that she had also duly authorized power of attorney to do the needful on her behalf before the family court since she is currently based in Canada.

7. In view of her inability to travel due to flight restrictions caused by Covid pandemic, she states that she is unable to personally travel. Wife further states that, in any case, since the grant of her Permanent Residence Status by the Immigration Authorities in Canada is on the condition that same to be given only if she is single/not married. In her own better interest, she has thus consciously chosen to take divorce and even otherwise her marriage is irretrievably broken down. No useful purpose would be served to continue in such a marriage. The co-petitioner husband also endorses her views and has given his consent for grant of mutual divorce by dissolving the marriage. Both of them seem to have settled their disputes without any duress or pressure with a tranquil state of mental dispensation.

8. 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.

9. Consequently, the revision petition is allowed and order dated 08.09.2021 (Annexure P-6) is set-aside. The Principal Judge, Family Court,

Kharar, 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. It is expected of the Family Court to take up the matter on an application moved by the parties along with copy of this order.

10. Parties are also at liberty to appear in person or through ‘Power of Attorney’ before the Family Court by filing an appropriate application to request taking up of their case.

11. The instant order be given *dasti* to learned counsel for the petitioners under the signatures of Bench Secretary of this Court.

12.10.2021
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No