



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.05.2022

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P. (MD).No.1098 of 2022

1.S.Sivaramakrishnan

2.E.Lakshmi

...Petitioners/Petitioners

Vs.

NIL

... Respondents/Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal Order passed by the Family Court, Madurai made in I.A.No.150 of 2021 in O.P.No.1289 of 2021 dated 02.03.2022 dismissing the application filed under Section 151 of C.P.C to waive the cooling period as stipulated in Section 13(B) (2) of the Hindu Marriage Act forthwith.

For petitioners : Mr.J.Sankarapandian

O R D E R

The present Civil Revision Petition has been filed jointly by the husband and wife challenging the order passed by the Family Court, Madurai rejecting the application to waive the cooling off period to entertain the mutual consent divorce application filed under Section 13(B) (2) of the Hindu Marriage Act.

2.The learned counsel appearing for the petitioners relies on the Judgment of the Hon'ble Supreme Court reported in **2017(8) SCC 746 (Amardeep Singh vs. Harveen Kaur)**. Paragraph 18 of the said Judgment reads as follows:-

"18. 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 13B(2), it can do so after considering the following :

i) the statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(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 XXXIIA 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."

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3. A reading of the averments made in the HMOP points out that the petitioners got married on 08.03.2019 and they are living separately from 22.09.2020 and the present application seeking divorce by mutual consent has been presented only on 22.12.2021.

4. From the sequence of dates mentioned above, it is very clear that in addition to the statutory period of one year, the petitioners are living separately for more than six months before the date of filing of the consent divorce application. Hence, in view of the Judgment of the Hon'ble Supreme Court (supra), the rejection order, dated 02.03.2022 passed by the Family Court, Madurai made in I.A.No.150 of 2021 is set aside and the same is allowed. The learned Judge, Family Court, Madurai is directed to record the evidence in mutual consent divorce, as and when the parties appear before the said Court.

5. With the above direction, this Civil Revision Petition stands allowed. No costs.

Sd/-

Vacation Officer/
Assistant Registrar

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

skn/rm

To
The Judge,
Family Court,
Madurai.

+1 CC to M/s.J. SANKARAPANDIAN, Advocate (SR-24131[F] dated 26/05/2022)

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