



CRP (MD) No. 1282 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 07.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.1282 of 2022

1.PL.Murugapan

Rep. by his father & Power of Attorney

MR.Palaniappan

2.T.Pappaye @ Iswarya

: Petitioners

Vs.

NIL

: Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to direct the Family Court, Madurai, to number the unnumbered Divorce Original Petition in SR.No.695 of 2022 filed by the petitioners on 27.06.2022 itself and to waive off the statutory cooling period of six months prescribed under Section 13B(2) of the Hindu Marriage Act, 1955 and to dispose of the Divorce Petition within a stipulated time.

For Petitioners : Mr.RM.Arun Swaminathan

ORDER

This civil revision petition is filed as against the docket entries made in the unnumbered Divorce Original Petition in SR.No.695 of 2022.



WEB COPY

2. The petitioners are husband and wife. Their marriage was solemnized on 29.08.2018 as per Hindu Nagarathar customs. After the marriage, their relationship got strained and they decided to separate mutually. They are living separately for more than a year and have also filed an application for divorce before the Family Court, Madurai, based on the deed of compromise arrived between the parties on 08.06.2022. This application was presented by both the petitioners on 13.06.2022 under Section 13B(2) of the Hindu Marriage Act, 1955, along with an emergent application. The said application was returned by the learned Judge on 20.06.2022 that separate power of attorney has to be filed and that any one prayer has to be mentioned. The petitioners re-presented the application with an endorsement that they filed the petition for a common and consequent prayer and therefore, there is no requirement for a separate petition under Order 3 Rule 1, 2 CPC and the Family Court Act. Even thereafter, the application was not numbered, but was adjourned. Aggrieved over the same, the petitioners have moved the present revision petition for a direction to number the unnumbered divorce petition in SR.No.695 of 2022 filed by the petitioners and to waive off the statutory cooling period of six months prescribed under Section 13B(2) of the Hindu Marriage Act.



3. Learned Counsel for the petitioners submitted that Order 3 Rules 1, 2 CPC categorically provides that appearance may be through a recognized agent and there is no restrictions for the Family Court for entertaining the application filed through power of attorney. By referring the definition of power of attorney from the Black's Law Dictionary, learned Counsel submitted that power of attorney is an instrument by which, a person is authorised to act as an agent of the person granting it and the relation between the donor and donee of the power is recognized under Section 182 of the Indian Contract Act. Once such authority is granted, the Act recognizes everything done by the donee in the name and with the signature of the donor thereof.

4. He further submitted that in the divorce petition, they sought for dissolving the marriage and the consequent registration of the marriage in Reg.No. 142/2018 on the file of the Registrar of Marriages, Ponnamaravathi. But the learned Judge misinterpreted the prayer as two separate prayers and asked to mention anyone. If the marriage is dissolved without setting aside the consequential registration, no purpose would be solved. The registration is consequential to the marriage solemnized. Therefore, he prayed for appropriate orders.



WEB COPY

5. He has also relied upon the decision of this Court in ***Sudha Ramalingam v. Registrar General, High Court of Madras*** [AIR 2015 266 (MAD)] and the decision of the Hon'ble Supreme Court in ***Amardeep Singh v. Harveen Kaur*** [2017 (8) SCC 746].

6. Heard the learned Counsel appearing for the petitioners and perused the available materials.

7. The petitioners / husband and wife, who got married in the year 2018, decided to dissolve the marriage in a hurried manner. They are living separately for more than a year and have filed an application under Section 13B(2) of the Hindu Marriage Act for mutual divorce with an emergent application. They have also sought to waive off the statutory cooling period.

8. Order 3 Rule 1 CPC empowers the party in a suit / proceedings to be represented by a pleader. For better appreciation, the same is extracted as under:-

“Appearances, etc., may be in person, by recognized agent or by pleader—



WEB COPY

Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Provide that any such appearance shall, if the Court so directs, be made by the party in person.”

9.A Division Bench of the Kerala High Court, ***In Re Sethi and Another***, in ***OP(FC)No.146 of 2021 (decided on 26.02.2021)***, has recognized the agents / pleaders and held as follows:-

“10. Order III Rule 1 of CPC empowers a party in a suit or proceedings to be represented by a pleader, but so far as the proceedings in the Family Court are concerned, the right or representation by the pleader does not exist. The operation of Order III Rule 1 is subject to any law for the time being in force. In addition to the said exclusion in the case, S.13 of the Act prohibits operation of Order III Rule 1 to the extent that the case be represented by the legal practitioner. The recognized agent appointed under Order III Rule 2 stands on a different footing from pleader. However, recognized agent cannot be a legal practitioner. The embargo on the appearance of legal practitioners cannot be extended to recognized agent. There is no



prohibition in the Act or Rules for a petition being filed by an authorized agent who is not legal practitioner.

... ..

14. On analysis of the statutory provisions and precedents discussed in detail above, there cannot be any dispute that attorney of a party can appear in any Court of civil jurisdiction including Family Court and do the act specified in the power of attorney. The authorities have gone to the extent of observing that an attorney is not incompetent witness and he can appear in the Court and depose in the Court as a witness in respect of the facts which are in his knowledge. The Apex Court in [Janki Vashdeo Bhojwani v. Indusind Bank Ltd](#) (AIR 2005 SC 439) has held that the word 'acts' employed in Order III Rules 1 and 2 of CPC confines only in respect of 'acts done by power of attorney holder' in exercise of power granted by the instrument and it would not include deposing in place of and instead of the principal. It was also held that he cannot depose for the principal in respect of a matter which only the principal can have the personal knowledge and in respect of which the principal is entitled to be cross-examined."

10. That apart, the recognized agents and pleaders have been approved in the Civil Rules of Practice, which is extracted as under:-

"16. Party appearing by agent :- (1) When a party appears by an agent other than a pleader or advocate, the agent shall before making or doing any appearance, application, or act, in or to the court, file in



court the power of attorney, or written authority, thereunto authorising him, or a properly authenticated copy thereof / or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject matter of the suit and that no other agent is expressly authorised to make or do such appearance, application or act.

(2) The judge may thereupon record in writing that the agent, is permitted to appear and act on behalf of the party, and unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognized by the court.”

11. Therefore, the learned Judge ought to have numbered the petition and proceeded with the matter. Of course, the Court can insist for the presence of the parties, verify the authority of their identity to confirm the consent. The presence can either be physical or virtual (video conference), in view of the present scientific advancements. However, merely because the petition is filed under Section 13B of the Act for mutual divorce, it does not mean that a party cannot institute a proceedings through a duly constituted power of attorney holder, inasmuch as Section 13B of the Act does not contain any provision abrogating the power of a power of attorney holder under Order 3 Rule 1, 2 and Order 6 Rule 14



CPC and Section 20(2) of the Act enables the Court to receive petitions filed by the party either by the petitioner himself or by some other competent person in the manner required by law for the verification of the plaint or a petition.

12. In this regard, the Division Bench of the Kerala High Court, in **Sethi's** case (supra), has held as follows:-

“16. It is true that in the enquiry which is to be conducted by the Family Court u/s 13B of HMA, the answers and willingness of the party is to be gathered directly from the party. The Court is free to insist the personal appearance of the party at that stage as contemplated in law. The advanced technology such as video conferencing facility can also be made use of to conduct enquiry contemplated u/s 13B of the HMA without insisting for physical presence of the parties in a case where parties are unable to appear before the Court personally. The Family Court has been given ample power to modulate its procedure. The Supreme Court of India in [State of Maharashtra v. Dr. Praful B. Desai](#) [(2003) 4 SCC 601] has held that the evidence of witnesses can be made through video conferencing. The Apex Court in [Santhini v. Vijaya Venketesh](#) (AIR 2017 SC 5745) has held that in Family Court proceedings, video conferencing could be allowed if both parties file consent memorandum for hearing of the case through video conferencing. Petition u/s 13B of HMA is filed jointly by both parties to the marriage with mutual consent. Hence, the enquiry contemplated u/s



WEB COPY

13B can be conducted using video conferencing facility. On interacting with the parties via video conferencing, if the Family Court feels that personal/ physical appearance of the party is necessary, it would be appropriate for the court at that juncture to direct the party to be physically present before the Court.”

13. Now the second question that arises for consideration is to waive off the cooling period, as required under Section 13B(2) of the Act. The Hon'ble Supreme Court, in the decision in **Amardeep Singh's** case (supra), has held as follows:-

“16. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling off the period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.

... ..



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.

... ..

21. Since we are of the view that the period mentioned in [Section 13B\(2\)](#) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.”

14.No doubt, there is an obligation on the part of the Courts to make last-minute efforts to save the marriage at any cost. Even the Courts want to save



the matrimonial life rather than breaking it. In our society, marriage is seen as a sacred union and not a legal contract. With this view in mind, the law makers have fixed the period of six months, so as to enable the parties to come together for mutual settlement instead of mutual divorce. But, in cases, where there is no possibility of re-union, especially after the divorce by mutual consent process has been initiated, the facts of the case has to be considered independently. A broken iron can be joined together, but not broken hearts and granting divorce to a couple, after considerable period of time, is nothing but operation success but patient died. Irretrievable marriage should come to an end at the earliest possible of time, so that the couple could have a better option to start their life, afresh.

15. Since it has now been held by the Hon'ble Supreme Court that the cooling period mentioned in Section 13B(2) of the Act is not mandatory but directory, though it was once compulsory for mutual consent divorce, it is for the concerned Court to exercise its discretion in the facts and circumstances of the case, when there is no possibility of parties resuming cohabitation.

16. In view of the aforesaid rulings and considering the reasonings stated in the petition and affidavit, this Court is inclined to allow this civil revision petition.



CRP (MD) No. 1282 of 2022

The learned Judge, Family Court, Madurai, is directed to number the unnumbered divorce petition in SR.No.695 of 2022 filed by the petitioners under Section 13B(2) of the Act and dispose of the same, in accordance with law. It is made clear that the relief is granted only to the extent of entertaining the application filed by the petitioners (first petitioner, through power of attorney) and waiving the six months cooling period and the Family Court shall decide the main divorce petition, independently and dispose of the same, after ascertaining the *bonafideness* of the consent of the parties.

The civil revision petition stands allowed in the above terms. No costs.

Index : Yes / No
Internet : Yes
gk

07.07.2022

To

The Judge,
Family Court,
Madurai.



WEB COPY



CRP (MD) No. 1282 of 2022

B.PUGALENDHI, J.

gk

CRP(MD)No.1282 of 2022

07.07.2022