



CRP(PD)(MD)No.2315 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.2315 of 2022

1. S.Shenbaga Iswariya
2. S.S.Ganesh

... Petitioners

versus

Nil

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, seeking a direction to the Family Court, Madurai, to dispose of the petition in H.M.O.P.No.597 of 2022 pending on its file.

For Petitioners : Mr.Niranjan S. Kumar

ORDER

This Civil Revision Petition is filed by the petitioners seeking a direction to the Family Court, Madurai, to dispose of the petition in H.M.O.P.No.597 of 2022 pending on its file.



2. The learned counsel appearing for the petitioners submits that the first petitioner herein is the wife and the second petitioner herein is the husband. Their marriage was solemnized on 26.05.2016 as per Hindu customs and rituals. After the marriage, their relationship got strained and they decided to separate mutually. Though the elders and family members of the petitioners had taken several efforts for re-union, it ended in vain. Now, both have agreed for divorce by mutual consent. Therefore, both have filed a petition in H.M.O.P.No. 597 of 2022 before the Family Court, Madurai, seeking divorce by mutual consent. Further, they have also filed an interlocutory application in I.A.No.962 of 2022 to waive the cooling period. But, the learned Judge, Family Court, Madurai, referred the matter for mediation. Aggrieved over the same, the petitioners are before this Court seeking a direction to the Family Court, Madurai, to dispose of H.M.O.P.No.597 of 2022 pending on its file.

3. The learned Counsel for the petitioners further by referring the decision of the Hon'ble Supreme Court in *Amardeep Singh Vs*



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Harveen Kaur reported in ***2017 (4) RCR (Civil) 608*** and ***Amit Kumar***

Vs Suman Beniwal [C.A.No.7650 of 2021] submits that statutory cooling off period has to be waived in cases of mutual consent divorce. Since the petitioners have been living separately for more than three years, the statutory cooling off period shall be waived, as per the guidelines of the Hon'ble Supreme Court. But, the learned Judge, Family Court, Madurai, without waiving the cooling off period, referred the matter for mediation.

4. Heard the learned Counsel for the petitioners and perused the materials.

5. It is admitted that the marriage between the parties have been solemnized on 26.05.2016 and they claim that they have been living separately for more than three years. Now they have filed a petition in H.M.O.P.No.597 of 2022 before the Family Court, Madurai, seeking divorce on mutual consent. They have also filed an application to waive the statutory cooling-off period. However, the trial Court referred the



matter for mediation. Therefore, the petitioners are before this Court.

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6. The 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



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parties resuming cohabitation and there are chances of alternative rehabilitation.”

7. The above guidelines say 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 considered as a sacred one and not a legal contract. With this view in mind, the law makers fixed the period of six months, so as to enable the parties to come together for reunion, instead of mutual divorce. But, in cases, where there is no possibility of reunion, 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 opinion to start their life, afresh.



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8. Since it has now been held by the Hon'ble Supreme Court that the cooling off period mentioned in Section 13B(2) of the Act is not mandatory but directory, though it was once compulsory for mutual consent divorce and when there is no possibility of parties resuming cohabitation, this court is of the view that the cooling off period in this case is to be waived.

9. In view of the above, the Civil Revision Petition is allowed and the six months cooling-off period is waived and the trial Court shall decide the main divorce petition, independently and dispose of the same, after ascertaining the *bonafideness* of the consent of the parties, within a period of two months from the date of receipt of a copy of this order. No costs.

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Index : Yes / No.

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B.PUGALENDHI, J.

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To

1. The Family Court,
Madurai.

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