



CRP PD(MD)No.2570 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(MD)No.2570 of 2022

1.K.Saumya Shanmugathai
2.J.Sivaram

... Petitioners

Vs

Nil

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the learned Family Judge, Madurai to dispose of the petition in H.M.O.P.No.1368 of 2022 pending on its file at the earliest within the time frame fixed by this Court.

For Petitioners : Mr.G.Prabhu Rajadurai for
Mr.J.Pandi

ORDER

This Civil Revision Petition is filed for an early disposal of H.M.O.P.No.1368 of 2022, pending on the file of the Family Court, Madurai, which is filed by mutual consent.



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2. The petitioners herein are husband and wife. Their marriage was solemnized on 05.11.2017, as per Hindu customs and rituals. Out of the wedlock, they have blessed with a female baby on 28.07.2018. Thereafter, 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, the petitioners filed a petition for dissolution of marriage by mutual consent, under Section 13(b) of Hindu Marriage Act, 1955 in H.M.O.P.No.1368 of 2022, before the Family Court, Madurai in the month of November 2022. The grievance of the petitioner is that the learned Judge of the Family Court, Madurai posted the case on 09.06.2023. Hence, a suitable direction may be issued to the learned Judge to dispose of H.M.O.P.No.1368 of 2022 immediately as it is filed by mutual consent.



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3. The learned Counsel for the petitioner further by referring the decision of the Hon'ble Supreme Court in ***Amardeep Singh Vs 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 the past four years, the statutory cooling off period shall be waived, as per the guidelines of the Hon'ble Supreme Court.

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 05.11.2017 and they claim that they have been living separately from August 2018. Now they have filed a petition in H.M.O.P.No.1368 of 2022 before the Family Court, Madurai, seeking



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divorce on mutual consent. The trial Court posted the case on 09.06.2023. Aggrieved over the same the present civil revision petition has been filed.

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 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 re-union, especially after the divorce by mutual consent



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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.

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, this civil revision petition is allowed and the six months cooling-off period is waived and the trial



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Court shall decide the main divorce petition, independently and dispose of the same, after ascertaining the *bonafideness* of the consent of the parties. The petitioners shall appear before the Family Court, Madurai on 05.01.2023. No costs.

21.12.2022

Index : Yes / No.

Internet : Yes / No.

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Note: Issue order copy on **03.01.2023**

To

The Family Court, Madurai.



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B.PUGALENDHI, J.

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