

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

**CR No.135 of 2022(O&M)
Date of Decision: 01.02.2022**

Tanisha Madan

.....Petitioner No.1

AND

Nipun Madan

.....Petitioner No.2

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Mansi Mridula, Advocate
for petitioner No.1.

Mr. Dhruva Bhagat, Advocate
for petitioner No.2.

(Through video conferencing)

RAJ MOHAN SINGH, J.(Oral)

This is a joint petition under Article 227 of the Constitution of India read with Section 151 CPC for setting aside the order dated 21.10.2021 passed by the Additional Principal Judge, Family Court, Gurugram in HMA No.913 of 2021 titled Nipun Madan and Tanisha Madan.

Learned counsel for petitioner No.1 submits that though the application filed by the parties to waive off the statutory Cooling off period of six months under Section 13-B(2) of the Hindu Marriage has been dismissed, but the said period has

now been satisfied and is almost over. Parties are aggrieved of the impugned order to the extent of calling upon any family member or relative or someone from the circle of petitioner No.1 at the time of statement of the parties in second motion. Learned counsel further contends that first motion was recorded on 06.08.2021 and presence of mother of petitioner No.1 was compelled and the same was recorded in the joint statement made by the parties. Under the law, there is no such requirement as the parties are educated and competent and are not undergoing any disability in law so as to impede the process in any manner. Both the parties are being represented through their counsel before Family Court at Gurugram. The presence of relative or any other person is not required for recording the statement of the parties at second motion. Order dated 21.10.2021 is being assailed only to the extent of compelling petitioner No.1 to bring family member at the time of recording second motion.

Learned counsel for petitioner No.2 admits the aforesaid position. He submits that there is no requirement in law to compel petitioner No.1 to bring her mother at the time of recording joint statement of the parties in second motion.

Recording of the presence of mother of petitioner No.1 at the time of first motion was also not required, though the

same was recorded in her presence, but at the time of second motion, no such compulsion can be made by the Court. Even for waiving of statutory cooling off period of six months, reference can be made to the ratio laid down in **Amardeep Singh Vs. Harveen Kaur, 2017(4) RCR (Civil) 608**, wherein the Hon'ble Apex Court has observed that the period mentioned in Section 13-B(2) of the Hindu Marriage Act is not mandatory, rather the same is directory and it is open to the Court to exercise its discretion in the facts and circumstances of the case. The Court has to see whether there is any possibility of parties resuming cohabitation or chances of alternative rehabilitation for the purpose of waiving the statutory period of six months.

In my considered opinion, parties have gone further and rather period of six months is at the verge of expiry and to that extent, parties are not willing to assail the impugned order on the ground of waiving off statutory cooling off period of six months.

For the reasons recorded hereinabove, I deem it appropriate to accept the petition. This revision petition is accordingly allowed. The impugned order is set aside and the Additional Principal Judge, Family Court, Gurugram is directed to record the statement of the parties without insisting upon presence of mother of petitioner No.1 or any other relative of

petitioner No.1 at the time of second motion in accordance with law.

01.02.2022	(RAJ MOHAN SINGH)
<i>Prince</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No