

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

**CM-7899-CII-2022 in/and
CR-2500-2022 (O&M)
Date of Decision: July 11, 2022**

Shavinder Kaur

...Petitioner

AND

Akashdeep

...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Shubham Goyal Advocate
for the petitioner.

Mr.Piyush Setia, Advocate
for the respondent.

ARCHANA PURI, J.

CM-7899-CII-2022

The present application has been filed for placing on record copies of statements of Shavinder Kaur and Akashdeep dated 11.04.2022 as Annexures P-4 and P-5.

In view of the averments made in the application, the same is allowed and statements of Shavinder Kaur and Akashdeep are taken on record.

CR-2500-2022

Challenge in the present revision petition is to the order dated 23.05.2022 (Annexure P-3), passed by learned Principal Judge, Family Court, Ferozepur, whereby the joint application (Annexure P-2) filed by the parties for waiver of the statutory period of six months for recording the statements of second motion, has been declined.

The material facts of the case are as follows:-

That marriage between parties i.e. Shavinder Kaur and Akashdeep was solemnized on 10.10.2016. After marriage, they lived together in the matrimonial house and one girl child, namely Vani was born on 16.05.2018. However, due to temperamental differences, they could not pull well with each other and they are residing separate since 24.06.2019. Considering the broken status of their marriage, they filed petition under Section 13B of the Hindu Marriage Act on 11.04.2022. On that very day, the statements of first motion were recorded and case was further adjourned to 17.10.2022, for recording of the statements of second motion. However, during the pendency of the petition, a joint application was filed by both Shavinder Kaur and Akashdeep, thereby seeking waiver of statutory wait of six months.

Vide impugned order dated 23.05.2022, the above-said application for seeking waiver of statutory wait of six months, was dismissed.

Feeling aggrieved by the above-said order, the present petition has been filed by petitioner-wife Shavinder Kaur. However, in pursuance of notice issued, respondent-husband Akashdeep also made appearance through counsel.

Now, both the counsel for Shavinder Kaur and Akashdeep have submitted in unison that, due to temperamental incompatibility, they could not live together and they are residing separate since 24.06.2019. Considering the broken status of the marriage, divorce petition by mutual consent has been filed. All terms of separation have been duly complied

between them. Out of the settled amount of Rs.8 lakh, Rs.4 lakh had been

paid to the petitioner-Shavinder Kaur by respondent-Akashdeep, at the time of recording of statements of first motion and the residue amount of Rs.4 lakh is to be paid at the time of recording of statements of second motion. Besides the same, they have also agreed to seek appropriate remedy qua the withdrawal/quashing of the various rounds of litigation, pending between them i.e. application under Section 125 Cr.P.C., petition under Section 13 of the Hindu Marriage Act, one complaint under SC/ST Act and also, petition under Section 9 of the Hindu Marriage Act, filed by respondent-Akashdeep.

It is submitted that parties are living separate since 24.06.2019 and all efforts made to save their marriage, proved futile. All terms of separation, by and large, have been complied with. They have also submitted that marriage between the parties has irretrievably broken and there are chances of re-settlement of both petitioner as well as respondent. As such, it is submitted that six months' waiting period be waived off.

In ***Amardeep Singh vs. Harveen Kuar, 2017 (8) SCC 746***, the Hon'ble Supreme Court has held as under:-

“19. 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 13-B (2), it can do so after considering the following:

(i) The statutory period of six months specified in Section 13-B (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 32A 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.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.

20. 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.”

In ***Amit Kumar vs. Suman Beniwal, 2022(1) RCR (Civil) 569***, the Hon'ble Apex Court has held that factors mentioned in ***Amardeep Singh vs. Harveen Kaur (supra)***, are illustrative and not exhaustive. It was held as herein given:-

“21. The factors mentioned in Amardeep Singh v. Harveen Kaur (supra), in Paragraph 19 are illustrative and not exhaustive. These are factors which the Court is obliged to take note of. If all the four conditions mentioned above are fulfilled, the Court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13B (2) of the Marriage Act.

22. The Family Court, as well as the High Court, have misconstrued the judgment of this Court in Amardeep Singh v. Harveen Kaur (supra) and proceeded on the basis that this Court has held that the conditions specified in paragraph 19 of the said judgment, quoted hereinabove, are mandatory and that the statutory waiting period of six months under Section 13B (2) can only be waived if all the aforesaid conditions are fulfilled, including, in particular, the condition of separation of at least one and half year before making the motion for decree of divorce.

23. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. A judgment is not to be read in the manner of a statute and construed with pedantic rigidity. In Amardeep Singh v. Harveen Kaur (supra), this Court held that the statutory waiting period of at least six months mentioned in Section 13B (2) of the Hindu Marriage Act was

not mandatory but directory and that it would be open to the Court to exercise its discretion to waive the requirement of Section 13B(2), having regard to the facts and circumstances of the case, if there was no possibility of reconciliation between the spouses, and the waiting period would serve no purpose except to prolong their agony.”

Further, in the same case, further it was observed as herein given:-

“27. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13B (2) of the Hindu Marriage Act, the Court would consider the following amongst other factors:

- (i) the length of time for which the parties had been married;*
- (ii) how long the parties had stayed together as husband and wife;*
- (iii) the length of time the parties had been staying apart;*
- (iv) the length of time for which the litigation had been pending;*
- (v) whether there were any other proceedings between the parties;*
- (vi) whether there was any possibility of reconciliation;*
- (vii) whether there were any children born out of the wedlock;*
- (viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.*

28. In this Case, as observed above, the parties are both well-educated and highly placed government officers. They have been married for about 15 months. The marriage was a non-starter. Admittedly, the parties lived together only for three days, after which they have separated on account of irreconcilable differences. The parties have lived apart for the entire period of their marriage except three days. It is jointly stated by the parties that efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife. Even after over 14 months of separation, the parties still want to go ahead with the divorce. No useful purpose would be

served by making the parties wait, except to prolong their agony.”

Now, adverting to the case in hand, it is pertinent to mention that statements of the parties of first motion were recorded on 11.04.2022, copies whereof, have been placed on record as Annexures P-4 and P-5. Perusal of the same reveals that both petitioner and respondent have categorically stated that there were sharp and irreconcilable differences between them regarding taste, habits and temperaments and so they could not pull on together and they are living separate since 24.06.2019. Further, they have also stated that their marriage has irretrievably broken down. Also, they categorically stated that during the interregnum period, they could not resume cohabitation, considering the broken status and thereupon, they had filed application for seeking dissolution of the marriage. In the said statements, they have specifically stated that they have settled all disputes. The minor child has been decided to live with the mother. Even, a sum of Rs.8 lakh has been settled between the parties as full and final settlement, out of which, Rs.4 lakh, had already been paid by the respondent to the petitioner, by way of cheque and residue amount of Rs.4 lakh, is to be paid, at the time of recording of the statements of second motion.

Perusal of the statements of the parties to the lis further reveals that there were bouts of litigation between the parties. Petitioner had filed an application under Section 125 Cr.P.C., petition under Section 13 of the Hindu Marriage Act, one complaint under Domestic Violence Act and one complaint under SC/ST Act. She has also undertaken to file quashing petition before the Court concerned and give statement in favour of the respondent, for seeking quashing of the FIR, got registered against the

respondent. Even, respondent had undertaken to withdraw the petition under Section 9 of the Hindu Marriage Act.

Now, it is submitted by learned counsel for the parties that the quashing petition has already been filed before this Court and the same is pending for adjudication.

Thus, it is evident from the statements of both the petitioner and respondent that matters relating to their separation have already been settled. They are living separate for the last about 3 years and seemingly, there are no chances of their living together. All disputes relating to permanent alimony, dowry etc. have been settled between them and there are chances of re-settlement of the parties.

Considering the same, no malafide on the part of the parties to the lis, is evident

In view of the aforesaid circumstances and also considering the observations made in *Amit Kumar's case (supra)* by the Hon'ble Supreme Court, the impugned order dated 23.05.2022 is set aside. The next date before the Court below is 17.10.2022. In the given circumstances, the parties are directed to make appearance before the Court below on 28.07.2022 and learned Court below shall prepone the case and record the statements of the parties of second motion and to decide the petition.

The revision petition stands allowed accordingly.

July 11, 2022
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes