

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

CR No.3377 of 2022

Date of Decision: 25.08.2022

Bhagwant Singh

..... Petitioner

versus

Manbir Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Chetan Bansal, Advocate
for the petitioner.

TRIBHUVAN DAHIYA J. (ORAL)

This is a revision petition under Article 227 of the Constitution of India, for setting aside the order dated 18.07.2022 (Annexure P-3) passed by the Additional Principal Judge, Family Court, Amritsar, dismissing the parties application for waiving of statutory period of six months for recording of the second motion statements under Section 13-B of the Hindu Marriage Act, 1955.

2. The facts of the case, the petitioner and respondent are husband and wife, who have jointly filed this petition. They were married on 24.01.2012 according to Sikh rights and rituals at Amritsar. Temperamental differences were there between the parties but they continue their married life with the hope of adjustment with each other. The differences, however, did not end and the situation went out of hand, resulting in petitioner No.2-wife moving to her parents' house in September, 2016. Since then, the parties have been residing separately

from each other on the addresses given, and there has not been any cohabitation between them. Attempts to bring about reconciliation between the parties also failed. Resultantly, they decided to file a petition for mutual divorce under Section 13-B of the Hindu marriage Act.

3. Accordingly, the petition for mutual divorce under Section 13-B of the Hindu marriage Act was filed before the Additional Principal Judge, Family Court, Amritsar. First motion statements were recorded on 27.05.2022, and the case was adjourned to 03.12.2022 for second motion. An application dated 11.07.2022 (Annexure P-2) was filed seeking waiver of the statutory period of six months to record the second motion statements. The application was, however, dismissed by the Family Court vide the impugned order dated 18.07.2022 on the ground, though the parties were residing separately since September 2016, they never had any round of litigation. And in the absence of litigation, efforts for mediation could not be made. The Family Court found that for smooth matrimonial life breathing time ought to be given to the parties for reconciliation, and dismissed the application.

4. It may be noted that Hon'ble the Supreme Court in '**Amardeep Singh vs. Harveen Kaur**', 2017 (8) SCC 746, has observed that the statutory period of six months mentioned in Section 13-B of the Hindu marriage Act can be waived as the same is not mandatory but directory. It is observed that waiver of the statutory period can be considered in the following circumstances:-

(i) *the statutory period of six months specified in Section*

13B(1), in addition to the statutory period of one year under Section 13-B(i) 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.*

5. The grounds on which the application seeking waiver of statutory period of six months has been dismissed are not relevant for the purpose. Merely because the parties had no litigation between them despite living separately for long time or that there was no attempt at mediation between them, was no ground to decline the waiver. It was not disputed that parties have wilfully agreed to part-ways by filing the mutual divorce petition, in which both of them have appeared for the first motion and recorded their statements. It is also not in dispute that they have been living separately for last more than five years and attempts to bring about reconciliation between them have failed. All issues between them have been settled amicably. It has also been pleaded that both of them want to remarry and start a new life.

6. On the above analysis, this Court is of the view that it is a fit case in which the statutory period of six months deserves to be waived by the Additional Principal Judge, Family Court, Amritsar.

The impugned order dated 18.07.2022 is, therefore, set aside and the

statutory period of six months is waived in terms of the law laid down by Hon'ble the Supreme Court in *Amardeep Singh's case (supra)*.

7. The revision petition is accordingly allowed and the parties are at liberty to approach the Additional Principal Judge, Family Court, Amritsar, for advancement of the date for recording of second motion statements.

(TRIBHUVAN DAHIYA)
JUDGE

25.08.2022

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No