

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

CR No.4093 of 2022

Date of Decision: 23.09.2022

Harpreet Singh Gill

.... Petitioner

Versus

Sandeep Kaur

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Tarun Sharma, Advocate
for the petitioner.

HARKESH MANUJA, J (ORAL)

Present petition is filed under Article 227 of the Constitution of India for setting aside the impugned order dated 18.08.2022 (Annexure P-3) passed by Ld. Principal Judge, Family Court, Ferozepur; whereby an application for waiving of the statutory period of 06 months for grant of divorce by way of mutual consent under Section 13-B(2) of the Hindu Marriage Act, 1955, for short 'the Act', has been dismissed.

Notice of motion.

Mr. Sultan Singh Gill, Advocate, who is present in Court, accepts notice on behalf of the respondent and raises no objection to the prayer made in the petition.

Learned counsel for the petitioner submits that both the parties are living abroad and as per the information provided to him, the petitioner-husband is presently living in Australia whereas the respondent-wife is staying in Canada. He further submits that all sincere and genuine efforts of reconciliation between the parties have failed.

I have considered the submissions made by learned counsel for the parties.

Marriage between the petitioner and respondent took place as per Sikh rites and ceremonies on 10.02.2016. Unfortunately, on account of temperamental differences, the parties could not pull on together and started living separately in 2017. Having failed in their efforts to make the marriage successful, a petition under Section 13-B of the Act for grant of divorce by way of mutual consent has been filed before the Principal Judge, Family Court, Ferozepur on 17.08.2022. In pursuance thereof, first joint statement of the parties through their Special POAs was recorded by the Principal Judge, Family Court, Ferozepur on 18.08.2022 and the matter was deferred to 23.03.2023 for recording of statements for second motion.

In the meanwhile, on the same day i.e. on 18.08.2022, the petitioner as well as respondent through their Special POAs moved a joint application for waiving of the statutory period of six months. It has been specifically stated in the application that there are no chances of reconciliation between the parties as all efforts made in this regard by the respectables of the family and the society have failed. Learned Principal Judge, Family Court, Ferozepur, vide order dated 18.08.2022, dismissed the application filed on behalf of the parties for waiving of the statutory period of six months.

Learned counsel for the petitioner relies upon judgment passed in the case of **Amardeep Singh Vs. Harveen Kaur**, (2017) 8 SCC 746; to contend that the period mentioned in Section 13-(B)2 of the Act is not mandatory; rather the same is directory and it is open to the Court to exercise its discretion keeping in view the facts and circumstances of the

case. Learned counsel further refers to para No.20 of the aforesaid judgment and the same is reproduced for reference:-

“20. Since we are of the view that the period mentioned in Section 13-B(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.”

Learned counsel also places reliance upon the judgments passed by this Court in CR-915-2020-**Jobanpreet Kaur Vs. Jaspinder Singh** decided on 07.02.2020 and CR-384-2021 titled as **Ravinder Singh Vs. Neha Vinay Puri**, decided on 03.03.2021 to press his cause.

Considering the facts and circumstances of the case as well as the law cited above, I am of the opinion that the petition deserves to be allowed.

As already submitted above, marriage between the parties got solemnized on 10.02.2016 and no issue was born out of the wedlock. Petitioner as well as respondent have been residing separately for the last almost 5 years. As pointed out by learned counsel for the parties, all sincere and genuine efforts regarding reconciliation have failed, therefore, it appears that there is no possibility of parties resuming cohabitation as they have already made up their mind to part their ways finally to rehabilitate themselves afresh and have thus, agreed that their marriage be dissolved by way of mutual consent in exercise of powers under Section 13-B(2) of the Act.

It may be noticed here that the object of cooling period of 06 months provided under Section 13-B(2) of the Act is merely to safeguard the interest of both the parties so that they can re-think and avoid any kind

of **hurried** decision in their life. The object of Section 13-B is not to prolong their agony; rather it is to enable the parties to rehabilitate. Once, it is apparent that there are no chances of reconciliation; rather on the contrary, chances are of their fresh rehabilitation, the waiver of cooling period of 06 months can be permitted being supplemental to the main objective.

In view of what has been stated hereinabove, I am of the considered opinion that the conditions for waiving of the statutory period of six months under Section 13-B(2) of the Act are fulfilled in the present case.

Keeping in view the averments made in the petition and in view of the ratio in **Amardeep Singh's** case (supra), the approach adopted by the Court below in the present case, to insist upon waiting period of six months for second motion, was thus uncalled for. The marriage between the parties has irretrievably broken. They have decided to part their ways amicably. Opportunity to live their lives in the manner they like, cannot be denied. In the peculiar facts herein, insisting to wait for another six months would result in adding to their woes.

Consequently, the revision petition is allowed. Impugned order dated 18.08.2022 (Annexure P-3) is set aside. Both the parties are directed to appear before the Principal Judge, Family Court on 10.10.2022 for recording their statements in second motion, who shall entertain the same by waiving off six months period and dispose of the petition on merits, in accordance with law.

23.09.2022*D.Bansal***(HARKESH MANUJA)
JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No