

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

**CM-761-CII-2022 in/and
CR-3270-2021 (O&M)
Date of Decision: February 08, 2022**

Amit

...Petitioner No.1

AND

Preeti

...Petitioner No.2

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Bhawesh Chaudhary, Advocate
for petitioner No.1.

Mr.Sanjay Vashisth, Advocate
for petitioner No.2.

ARCHANA PURI, J.

The matter has been taken up through video conferencing in the
light of COVID-19 pandemic.

CM-761-CII-2022

The present application has been filed for preponement of date
of hearing of the main case, which is fixed for 21.02.2022.

In view of the averments made in the application, the same is
allowed and the main case i.e. CR-3270-2021 is taken for hearing today
itself.

CR-3270-2021

Challenge in the present revision petition is to the order dated

22.11.2021 (Annexure P-4), passed by learned Addl. Principal Judge,

Family Court, whereby an joint application 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. Amit and Preeti, was solemnized on 29.06.2020, at village Bairan, Tehsil Loharu, District Bhiwani. However, they could not live together due to temperamental differences and they are residing separate since 16.08.2020. Considering the broken status of their marriage, they filed the petition for seeking divorce by mutual consent under Section 13-B of the Hindu Marriage Act on 17.09.2021. On that very day, statements of first motion were recorded and the case was further adjourned to 18.03.2022 for recording the statements of the parties of second motion. However, during the pendency of the petition, a joint application was filed by both the petitioners, thereby seeking waiver of statutory wait of six months.

Vide impugned order dated 22.11.2021, the above-said application seeking waiver of statutory wait of six months was dismissed.

Feeling aggrieved by the above-said order, present petition has been filed.

Now, both the counsel for the petitioners submitted in unison that due to incompatibility and different temperaments, the petitioners could not live together and they are residing separate since 16.08.2020. Both of them lived together for small span of time, after marriage. Considering the broken status of the marriage, divorce petition by mutual consent had been filed. All terms of separation have been duly complied between them.

petitioner No.1. Also, it is submitted by learned counsel for the petitioner No.2 that she has applied for the post of Teacher in Rajasthan and she has qualified REET-2021 examination. There is provision of reservation for divorced ladies for selection for the above-said post and if the statement of second motion could be recorded on earlier date, then she could seek the benefit of reservation in the said examination.

Learned lower Court had dismissed the application for seeking waiver of statutory period of six months as it is observed that the condition as laid down by the Hon'ble Supreme Court in ***Amardeep Singh vs. Harveen Kaur, 2017 (8) SCC 746***, have not been complied with. Moreover, there is no document coming on record with regard to the qualification of petitioner No.2 to REET-2021 examination.

In ***Amardeep Singh's case (supra)***, so relied upon by the lower Court, 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.”

At this juncture, it is also pertinent to mention the latest judgment delivered by the Hon'ble Apex Court in the case of **Amit Kumar vs. Suman Beniwal, 2022(1) RCR (Civil) 569**, wherein, it has been 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, 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 joint statement of the parties of first motion was recorded on 17.09.2021, copy whereof, is placed on the Court file. A perusal of the same reveals that both the petitioners categorically stated that they could not live together and have withdrawn from the society of each other, due to temperamental and other differences and they are living separate since 16.08.2020. In spite of the efforts, made by the families of both the petitioners, they could not sort out differences, due to complete incompatibility with each other. Also, it has been specifically stated by both the petitioners that they have settled all disputes regarding maintenance, *stridhan*, permanent alimony etc. Even, petitioner No.2-Preeti had received settled amount of Rs.7,33,000/-, by way of transfer through RTGS from petitioner No.1 as permanent alimony etc. and nothing is to be paid at the time of recording of statement of second motion. Also, they stated that present settlement was made without any fear, coercion or pressure of any kind.

Thus, it is evident from the joint statement of both the petitioners that matters relating to their separation have been settled but at the same time, it is pertinent to mention that petitioner No.2 has also appeared in REET-2021 examination. On query by the Court, certain documents relating to REET examination, have been placed on record. It is now submitted that REET examination takes place in two phases. The 1st phase is relating to qualification for all categories. Perusal of the advertisement of REET, placed on record, reveals that this advertisement was issued in the beginning of 2021 and date for applying online was from

examination of level-1 and level-2 in November, 2021. Qua this examination of 1st phase, there is no such reservation. It is in the second advertisement which is dated 31.12.2021, that there is reservation for the widows, divorced females of all categories and Ex-servicemen. Petitioner No.2 intends to take benefit of this recital, if her statement is recorded. It is further pertinent to mention that joint application for seeking divorce by mutual consent was filed on 17.09.2021 i.e. it was filed before clearance of level-1 and level-2 of the 1st phase. Even, the joint application for seeking waiver of six months wait, was also filed before the clearance of the examination. In these circumstances, no malafide on the part of the petitioners, is also evident.

Considering the aforesaid circumstances and also considering the observations made in *Amit Kumar's case (supra)* by the Hon'ble Supreme Court, it is also essential to note that in the present case also, parties are educated one, who have settled all their claims qua separation, on account of irreconcilable differences. Considering the same, the impugned order dated 22.11.2021 is hereby set aside. The next date fixed before the lower Court is 18.03.2022. In the given circumstances, the lower Court is requested to prepone the case and record the statements of second motion and to decide the case.

At this juncture, it is also submitted by learned counsel for petitioner No.2-Preeti that qua the second advertisement dated 31.12.2021, a candidate is required to submit online application w.e.f. 10.01.2022 to 09.02.2022. The last date, as such, is stated to be 09.02.2022.

Considering the submissions so made, the parties are requested

and the lower Court is hereby requested to prepone the case and record statements of parties and pass the appropriate order, on that very day.

The present revision petition stands allowed accordingly.

February 08, 2022
Vgulati/Sonu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No