

CR-6114-2022

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

CR-6114-2022

Date of Decision: December 22, 2022

Sukhveer Kaur Pawar

...Petitioner No.1

AND

Talwinder Singh

... Petitioner No.2

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rajesh Bhatheja, Advocate for the petitioners.

DEEPAK GUPTA, J.(Oral)

The two petitioners before this Court are husband and wife. They are aggrieved by the order dated 29.11.2022 passed by learned Family Court, Camp Court Zira, whereby their application to waive off mandatory period of six months for recording second motion statement of the parties in a petition under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act'), was rejected.

2. As pleaded by the parties, their marriage was performed on 24.08.2020. They stayed together only for 15 days. No issue was born out of the wedlock. Due to temperamental differences, they could not pull on together. They filed a petition under Section 13-B of the Act seeking a decree of divorce by mutual consent. Their first motion statement was recorded on 30.08.2022. They moved application on 29.11.2022 to waive off the mandatory period of six months for recording their second motion statement, which has been rejected.

3. It is contended by learned counsel that marriage lasted only for 15 days and that ever since 10.09.2020, parties are residing separately. All the disputes pertaining to permanent alimony have already been settled. There is no chances of any reunion. Petitioner No.1 is getting best match for re-marriage, which is coming from Canada in the mid of December for one month and if the marriage is not solemnized during this period, it will cause a lot of hardship to her to get a suitable match.

4. Having heard submissions of learned counsel for the petitioners, I find merit in the revision, which deserves to be allowed.

5. Section 13B(2) of the Act envisages a total waiting period of one and half year from the date of separation to move the petition for a decree of divorce. However, purpose of Section 13-B is not to weaken the institution of marriage. Rather the provision enables the parties to a marriage to shorten/ avoid unnecessary acrimonious litigation, where both the spouses have mutually decided to part ways. As has been observed by the Hon'ble Supreme Court in case of ***“Amit Kumar vs Suman Beniwal”***, Civil Appeal No.7650 of 2021 (Arising out of SLP (Civil) No.20108 of 2021), decided on 11.12.2021, Legislature has, in its wisdom, enacted [Section 13B \(2\)](#) of the [Hindu Marriage Act](#) to provide for a cooling period of six months from the date of filing of the divorce petition under [Section 13B \(1\)](#), in case the parties should change their mind and resolve their differences. After six months if the parties still wish to go ahead with the divorce, and make a motion, the Court has to grant a decree of divorce declaring the marriage dissolved with effect

from the date of the decree, after making such enquiries as it considers fit.

6. Where there is a chance of reconciliation, however slight, the cooling period of six months from the date of filing of the divorce petition should be enforced. However, if there is no possibility of reconciliation, it would be meaningless to prolong the agony of the parties to the marriage. Thus, if the marriage has broken down irretrievably, the spouses have been living apart for a long time, but not been able to reconcile their differences and have mutually decided to part ways, it is better to end the marriage, to enable both the spouses to move on with the life.

7. In **Amardeep Singh vs Harveen Kaur, (2017) 8 SCC 746**, it has been held by the Hon'ble Supreme Court 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 13B \(2\)](#), 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 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.”

8. However, in **Amit Kumar's case (supra)**, it was held that factors mentioned in Amardeep Singh's case (supra) are illustrative and not exhaustive. These are the factors which the Court has obliged to take note of and if all these conditions are fulfilled, the Court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13B(2) of the Act.

9. Hon'ble Supreme Court held further that Family Court as well as the High Court had misconstrued the judgment in Amardeep Singh's case (supra) to proceed on the basis that conditions enumerated in the para 19 of the judgment quoted earlier are mandatory and that statutory waiting period of six months under Section 13B(2) of the Act can be waived if all the aforesaid conditions are fulfilled, including in particular the condition of separation of at least one and a half year before making the motion for decree of divorce.

10. Hon'ble Supreme Court further held in **Amardeep Singh's case (supra)** that statutory waiting period of at least six months mentioned in Section 13B(2) of the Hindu Marriage Act, was not mandatory and rather it is directory and it will be open to Court to exercise jurisdiction 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. The Hon'ble

Supreme Court further held as under:-

“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;*
3 (2016) 16 SCC 346 4 (2009) 10 SCC 415
- (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.*

11. In the present case as observed earlier, marriage between the parties lasted only for 15 days. They are living separately since 10.09.2020 i.e. for the last more than 2 years and 3 months. As per contentions made by both the spouses, there is no possibility of reconciliation as all such efforts have failed. No issue was born out of the wedlock. Parties have already settled the issue pertaining to permanent alimony. Parties have freely, on their own accord, without coercion or pressure arrived at a genuine settlement, taking care of the alimony, as is evident from the statements of the parties made at the time of first motion on 30.08.2022.

12. In view of the abovesaid circumstances, the impugned order dated 29.11.2022 declining to waive off the period of six months for the second motion statement, cannot be sustained.

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This revision is accepted. Learned Family Court concerned is directed to take up the application again and dispose of the case within a period of 15 days on receipt of certified copy of this order.

13. Present revision stands allowed accordingly.

December 22, 2022

sarita

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No