

13.10.2023

Ct.No. 7
Sl.No.AD 36
Amalranjan

C.O. No. 3294 of 2023

Pranabesh Kundu
Vs.
Priya Sarkar

Mr. Partha Pratim Roy
Mr. Sarbananda Sanyal

...for the petitioner

Mr. Roy, learned advocate appearing for the petitioner submits that in spite of the fact that it has now been judicially settled that the statutory waiting period under Section 28 of the Special Marriage Act can be waived but the learned Trial Judge is refusing to accept such an application.

On a query of the Court Mr. Roy submits that though the petitioner attempted to file a petition which has been annexed at page 30 of the revisional application, but the learned District Judge at Barasat is not accepting the said application.

In support of the contention that the statutory waiting period can be waived, Mr. Roy, relies upon a decision of the Hon'ble Supreme Court reported in (2017) 8 SCC 746 (Amardeep Singh Vs. Harveen Kaur) wherein the Hon'ble Supreme Court in paragraph 19 of the said judgment has held as follows:

“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 13-B(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 32-A 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.”

In view of the aforesaid well settled proposition of law, a party cannot be prevented from filing an application for waiver of the statutory waiting period.

The parties are at liberty to file a petition for waiving the statutory period under Section 28 of the Special Marriage Act within a period of two weeks after the reopening of the court after Puja Vacation. If such application is filed the learned Additional District Judge, Fast Tract 2nd Court at Barasat is requested to take up the application, if any, filed pursuant to the liberty granted by this court for hearing and decide the same in the light of the decision in Amardeep Singh (supra) as expeditiously as possible but preferably within a period of 4 weeks from the date of filing of such application.

The petitioner shall be obliged to forward a copy of this application along with a copy of the order passed by this court upon the opposite

parties by registered post/speed post with Acknowledgement Due or by hand.

With the above observation the C.O. 3294 of 2023 is disposed of.

Urgent certified photo copy of this order, if applied for, be given to learned advocates for the parties upon compliance of all requisite formalities.

(Hiranmay Bhattacharyya, J.)