



CRP PD(MD)No.21 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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1.J.Rajkumar
2.Bahnisikha

... Petitioners

Vs

Nil

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 15.11.2022 passed in I.A.No.1633 of 2022 in O.P.No.1182 of 2022 on the file of the Family Court, Madurai.

For Petitioners : Mr.B.Asha

ORDER

This Civil Revision Petition is filed as against the order passed by the learned Judge, Family Court, Madurai in I.A.No.1633 of 2022 in O.P.No.1182 of 2022, dated 15.11.2022.



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2. The petitioners herein are husband and wife. Their marriage was a love marriage and was solemnized on 01.02.2017, as per Hindu customs and rituals. Out of the wedlock, they have blessed with a female baby on 22.01.2021. Thereafter, their relationship got strained and they decided to separate mutually. Though the elders and family members of the petitioners had taken several efforts for re-union, it ended in vain. Now, both have agreed for divorce by mutual consent. Therefore, the petitioners filed a petition for dissolution of marriage by mutual consent, under Section 13(B)(2) of Hindu Marriage Act, 1955 in O.P.No.1182 of 2022, before the Family Court, Madurai and the same was posted for further hearing on 20.04.2023. Along with the original petition, the petitioners also filed an interlocutory application in I.A.No.1633 of 2022 to waive the cooling off period of six months. However, it was dismissed by the trial Court. Hence, the petitioners are before this Court with this Civil Revision Petition.



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3. The learned Counsel appearing for the petitioners by referring the decision of the Hon'ble Supreme Court in ***Amardeep Singh Vs Harveen Kaur*** reported in ***2017 (4) RCR (Civil) 608*** and ***Amit Kumar Vs Suman Beniwal [C.A.No.7650 of 2021]*** submits that statutory cooling off period can be waived in cases of mutual consent divorce. According to her, the petitioners have been living separately for the past two years and she has made a specific averments that there was no cohabitation among them and there is no possibilities between them to restive, mediate or cohabit in future. The trial Court, without considering these averments dismissed the application in I.A.No.1633 of 2022, under a wrong motion that there was no effective mediation and reconciliation for reunion in accordance with law.

4. Heard the learned Counsel for the petitioners and perused the materials placed on record.



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5. Admittedly, the marriage between the petitioners was a love marriage and was solemnized on 01.02.2017. They claim that due to some misunderstanding, they have been living separately for more than two years. Now they have filed a petition in O.P.No.1182 of 2022, before the Family Court, Madurai for dissolution of marriage by mutual consent and the same is posted to 20.04.2023, in view of the provisions under Order 13B (2) of the Act. Along with the original petition, the petitioners have also filed an interlocutory application in I.A.No.1633 of 2022 to waive the cooling off period of six months as provided under 13B (2) of the Act. However, the same was dismissed by the trial Court.

6.As per the orders of the Hon'ble Supreme Court, all the efforts for mediation/conciliation including efforts under Order 32 A Rule 3 of Civil Procedure Code, Section 23(2) of the Hindu Marriage Act and Section 9 of the Family Courts Act to reunite the parties have



to be taken and if it is failed and if there is no likelihood of success in that direction, the Court may proceed further by cooling off the waiving period under order 32A Rule 3 of Civil Procedure Code.

6.1.For ready reference, Order 32A Rule 3 of Civil Procedure Code is extracted as under:-

3.Duty of Court to make efforts for settlement.

(1) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement, in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.



(3) The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.

6.2. Section 23(2) of the Hindu Marriage Act is Extracted
as under:-

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.

(3) For the purpose of aiding the Court in bringing about such reconciliation, the Court may, if the parties



so desire or if the Court thinks it just and proper so to do adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court, if the parties fail to name any person, with directions to report to the Court, as to whether reconciliation can be and has been, effected and the Court shall in disposing of the proceedings have due regard to the report.

6.3. Section 9 of the Family Courts Act is extracted as under :-

9. Duty of Family Court to make efforts for settlement.-

(1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this



purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit. -

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it think fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of any other power of the Family Court to adjourn the proceedings.

7. The Hon'ble Supreme Court, in the decision in ***Amardeep Singh***'s case reported in **2017 (4) RCR (Civil) 608**, has held as follows:-

“16. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate



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them as per available options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling off the period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.

... ..

18. 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 13B\(2\)](#), 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 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.*

... ..

21. *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.”*

8.The above guidelines say there is an obligation on the part of the Courts to make last-minute efforts to save the marriage at any cost. Even the Courts want to save the matrimonial life rather than



breaking it. In our society, marriage is considered as a sacred one and not a legal contract. With this view in mind, the law makers fixed the period of six months, so as to enable the parties to come together for reunion, instead of mutual divorce. But, in cases, where there is no possibility of re-union, especially after the divorce by mutual consent process has been initiated, the facts of the case has to be considered independently.

9.This Court wants to reiterate that in terms of Section 9 of the Family Courts Act, the Family Courts are expected to make all efforts to settle the matrimonial disputes through mediation. Order 32A Rule 3 of Civil Procedure Code caste a duty on the Courts to make efforts for settlement. Section 23(2) of the Hindu Marriage Act also mandate the Courts and also impose a duty on the Court to make all endeavour to bring about the reconciliation between the parties before proceeding to grant any relief under this Act.



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10.The foregoing discussions make it clear that the cooling off period is not a mandatory and it is only a directory, however, subject to the mediation and reconciliation process, as enumerated in the case of *Amardeep Singh Vs Harveen Kaur* reported in **2017 (4) RCR (Civil) 608** and as per Order 32A Rule 3 of Civil Procedure Code, Section 23(2) of the Hindu Marriage Act and Section 9 of the Family Courts Act.

11.In the present case on hand, the petitioners claim that since all the efforts taken by the elders in their family to reconcile them and to continue their marriage was ended in vain and they are also living separately for the past two years and there is no possibility of reunion and cohabitation between them, the cooling-off period has to be waived off. The alleged mediation conducted by the elders of their family cannot be treated as a reconciliation process conducted under Order 32 A Rule 3 of Civil Procedure Code, Section 23(2) of the Hindu



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Marriages Act and Section 9 of the Family Courts Act. However, irretrievable marriage should come to an end at the earliest possible of time, so that the couple could have a better option to start their life, afresh.

12. As it has been held by the Hon'ble Supreme Court that the cooling off period mentioned in Section 13B(2) of the Act is not mandatory but directory, though it was once compulsory for mutual consent divorce and when there is no possibility of parties resuming cohabitation, this court is of the view that the cooling off period in this case is to be waived, however, as per the directions of the Honourable Supreme Court in *Amardeep Singh Vs Harveen Kaur* reported in **2017 (4) RCR (Civil) 608**, as stated supra.

13. In view of the above, this Civil Revision Petition is disposed of and the six months cooling-off period is waived and the



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trial Court shall decide the main divorce petition, independently and dispose of the same, after ascertaining the *bonafideness* of the consent of the parties and also considering the mediation process within a reasonable time, preferably within a period of two weeks from the date of receipt of a copy of this order. No costs.

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Index : Yes / No.

Internet : Yes / No.

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To

The Judge, Family Court, Madurai.



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