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C.R.P(MD).No.1149of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1149 of 2023

Mary Meena

... Petitioner/2nd Petitioner

Vs.

Sebin Antony

... Respondent/1st Petitioner

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to direct the Family Court,Kanyakumari District at Nagercoil to waive cooling period of 6 months in I.D.O.P.No.842 of 2022 and pass decree for divorce by mutual consent within the time stipulated by the Court.

For petitioner : Mr.R.Nandakumar

ORDER

This Civil Revision Petition has been filed by the petitioner to direct the Family Court,Kanyakumari District at Nagercoil to waive cooling period of 6 months in I.D.O.P.No.842 of 2022 and pass decree for divorce by mutual consent within the time stipulated by the Court.

2.It is the case of the petitioner that the petitioner and the respondent have decided to opt for dissolving the marriage solemnized between them in



I.D.O.P.No.842 of 2022 by mutual consent. The petitioner seeks a direction to the Family Court, Kanyakumari District at Nagercoil, to grant waiver of the cooling period of six months as is contemplated under the provisions of the Indian Divorce Act, 1869.

3.The learned counsel for the petitioner has placed reliance a decision of the Hon'ble Supreme Court in the case of **Amardeep Singh Vs. Harveen Kaur** reported in **(2017) 8 SCC 746**, wherein the Hon'ble Supreme Court has held as follows:-

“17.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 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.”

4.Ultimately, the Hon'ble Supreme Court 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



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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.

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 concerned Court.

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.”

5.The learned counsel for the petitioner has also placed reliance a decision of the Kerala High Court in the case of **Tomy Hoseph Vs. Smitha Tomy** reported in **2019 194 AIC 561**.



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6.In view of the decisions cited above, the petitioner has made out a case for dissolving the marriage through mutual consent before the cooling period under Section 10A of the Divorce Act, 1869. However, it cannot be directed to waive under Article 227 of the Constitution of India. It is open for the petitioner to file appropriate petition before the Court. If such application is filed, the Court shall dispose the same as expeditiously as possible within a period of 2 weeks from the date of receipt of a copy of this order.

7.With the above direction, this Civil Revision Petition is disposed of.

No costs.

28.04.2023

NCC : Yes/No
Index : Yes/No
Internet:Yes/No
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To

- 1.The Family Court,
Kanyakumari District at Nagercoil.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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