

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CR-158-2023****Date of decision: 11.01.2023****HARPREET KAUR****...Petitioner(s)****vs****GURSIMRAT SINGH****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Kanwar Pahul Singh, Advocate
for the petitioner.

NIDHI GUPTA, J.

Challenge in the present revision petition is to the order dated 20.12.2022 passed by learned Additional Principal Judge, Family Court, Amritsar whereby 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.

Ms. Vini Mahajan, Advocate appears on behalf of respondent and files Vakalatnama which is taken on record. Learned counsel for the respondent has no objection if the present petition is allowed.

The material facts of the case are as follows:-

That, marriage between parties i.e. Harpreet Kaur and Gursimrat Singh, was solemnized on 29.12.2017, at Dhanju Palace, Mehta Road, Amritsar. However, they could not live together due to temperamental differences and they are residing separately since 27.03.2021. 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. Statements of first motion were recorded on

18.10.2022 and the case has been adjourned to 20.04.2023 for recording the statements of the parties of second motion. However, during the pendency of the petition, a joint application dated 24.11.2022 Annexure P2, was filed by both the petitioners, thereby seeking waiver of statutory wait of six months.

Vide impugned order dated 20.12.2022, 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, counsel for both the parties submitted in unison that due to incompatibility and different temperaments, the parties could not live together and they are residing separately since 27.03.2021. 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. Even, an amount of Rs.10,50,000/- has been received by the petitioner from the respondent. The custody of the child is also stated to be with the petitioner.

Learned lower Court has dismissed the application for seeking waiver of statutory period of six months as it is observed that the conditions as laid down by the Hon'ble Supreme Court in ***Amardeep Singh vs. Harveen Kaur, 2017 (8) SCC 746***, have not been complied with.

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 nonstarter. 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, advertent to the case in hand, it is pertinent to mention that joint statement of the parties of first motion was recorded on 18.10.2022. 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 separately for the past almost 2 years, since 27.03.2021. In spite of the efforts made by the families of both parties, they could not sort out differences, due to complete incompatibility with each other. Also, it has been specifically stated by both the parties that they have settled all disputes regarding maintenance, stridhan, permanent alimony etc. Even, petitioner Harpreet Kaur had received settled amount of Rs.10,50,000/-, from respondent 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 parties that matters relating to their separation have been settled. In these circumstances, no malafide on the part of the parties, 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 20.12.2022 is hereby set aside. The next date fixed before the lower Court is 20.04.2023. 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.

Considering the submissions so made, the parties are directed to make appearance before the concerned Court on 23.01.2023 at 10.00 a.m. 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.

11.01.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No