

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

(109)

CR-2456-2023

Date of Decision : April 25, 2023

Veerpal Kaur

.. Petitioner

Versus

Gagandeep Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pushp Jain, Advocate, for the petitioner.

HARSIMRAN SINGH SETHI J. (ORAL)

Present civil revision petition has been filed challenging the order dated 23.03.2023 (Annexure P-4) passed by the Family Court, Mansa by which, the application filed by the petitioner against the respondent for waiving off the statutory period of six months required under Section 13-B (2) of the Hindu Marriage Act, 1955 was dismissed.

Learned counsel for the petitioner argues that in the present case, the parties got married on 20.11.2020 and due to differences in temperament and for various other reasons, since 14.07.2021, they have been living separately. Ultimately, both the parties decided to end their marriage and a joint petition under Section 13-B of the Hindu Marriage Act was filed for the grant of mutual divorce. In which petition, first motion statement has already been recorded on 02.02.2023 and the case has been

adjourned for 03.08.2023 for recording of second motion.

Learned counsel for the petitioner submits that as the marriage between the parties has irretrievably broken, the prayer was made for waiving off the statutory period required under Section 13-B (2) of the Hindu Marriage Act, which application has been dismissed by the Family Court by the impugned order dated 23.03.2023.

Learned counsel for the petitioner further submits that once the parties had already decided to get divorce keeping in view the fact that the marriage has irretrievably broken down and are living separately for a long period of time, the said aspect should have been considered so as to pass appropriate order for waiving off the statutory period of six months whereas, the Family Court dismissed the said application on the ground that efforts are still required to be made for reconciliation and mediation, hence, statutory period cannot be waived off.

Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in ***Civil Appeal No.11158 of 2017 titled as Amardeep Singh vs. Harveen Kaur, decided on 12.09.2017*** to contend that statutory period can be waived off by the Court in case the Court comes to the conclusion that the marriage has irretrievably broken down.

I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

The question which arise for the consideration of this Court is whether, the statutory period provided under Section 13-B (2) of the Hindu Marriage Act is mandatory or is directory. The trial Court has rejected the claim of the petitioner for waiving off the statutory period by treating the same to be mandatory.

The Hon'ble Supreme Court of India in *Amardeep Singh's case (supra)*, has held that wherever the Court finds that the marriage has irretrievably broken down and parties have already completed the statutory period of six months separation prior to even filing of the joint petition for mutual divorce and the marriage is already one year old, the Court can examine the feasibility of waiving off the statutory period. The relevant para of the judgment in *Amardeep Singh's case (supra)* is reproduced as under:-

“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.*

19. XXXX XXXX XXXX XXXX

20. XXXX XXXX XXXX XXXX

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.”

The same view was again reiterated by the Hon'ble Supreme Court of India in ***Civil Appeal No.7650 of 2021 titled as Amit Kumar vs. Suman Beniwal, decided on 11.08.2021*** holding that where the parties have already separated on account of irreconcilable differences, the Court can examine the same and can waive off the statutory waiting period of six months.

In the present case, the Court below has not at all dealt with the said aspect as to whether, keeping in view the conduct of the parties, the marriage has already broken down due to irreconcilable differences or not.

The only relevant factor for the deciding the application of waiving off the six months period is as to whether the parties can rejoin each other company or not within a period of six months and in case, the Court comes to the conclusion that no such possibility is there, the statutory period can be waived off even by the Family Court.

Keeping in view the above, the impugned order dated 23.03.2023 (Annexure P-4) is set aside and the trial Court is directed to reconsider the matter afresh and pass appropriate orders with regard to the prayer of the waiving of the period.

It will be appreciated that fresh order after due consideration is passed within a period of one month from the receipt of copy of this order.

Parties are directed to appear before the trial Court on
11.05.2023.

The present civil revision petition is allowed in above terms.

April 25, 2023

harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No