

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.M. No.17752-CII of 2023 in/and
FAO No.2642 of 2023 (O&M)
Decided on:02.11.2023

Payal Bala

... Appellant No.1

Versus

Gaurav Goyal

... Appellant No.2

**CORAM : HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Surinder Garg, Advocate
for the appellants.

HARPREET SINGH BRAR, J. (ORAL)

C.M. No.17752-CII of 2023

Application is allowed.

Affidavits furnished by the appellants are taken on record,
subject to all just exceptions.

FAO No.2642 of 2023

1. The present appeal has been filed by the appellants assailing the order dated 11.04.2023 passed by the learned Principal Judge, Family Court, Mansa (hereinafter referred to as the Family Court) whereby the application filed by the appellants herein under Section 14 (1) of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act of 1955) for allowing their petition under Section 13B of the Act of 1955 before elapsing of one year from the date of marriage stands dismissed.

2. In brief, the facts are that marriage of the appellants herein was solemnized on 17.11.2022 at Royal Moose, Opposite Mata Sundri Girls

College, New Court Road, Mansa by way of Hindu rites and ceremonies.

The appellant No.2 namely Gaurav Goyal was residing in Australia since long and he came to India for solemnization of his marriage. After solemnization of their marriage on 17.11.2022, appellants resided together at Malerkotla for three days only i.e. till 20.11.2022. During this period, they did not have any physical relation. In December, 2022, appellant No.2 returned to Australia and after going back, he refused to keep any relation with appellant No.1. In view of the aforesaid fact, both the parties decided to file a joint petition for dissolution of marriage by way of mutual consent under Section 13B of the Act of 1955. Along with the aforesaid petition, appellants had also filed an application under Section 14 of the Act of 1955 for allowing their petition under Section 13B of the Act of 1955 before elapsing of one year from the date of marriage, which stood dismissed by the learned Family Court vide impugned order dated 11.04.2023. Against the said order, appellants are before this Court in the instant appeal.

3. Learned counsel appearing for the appellants, *inter alia*, contends that the learned Family Court has gravely erred in dismissing their application under Section 14 (1) of the Act of 1955. The appellants have sought dissolution of their marriage under Section 13B of the Act of 1955 before expiry of one year from the date of their marriage. It is further contended that once the parties were not at issue, the finding recorded by the learned Family Court that the appellants herein had not come to the Court with clean hands and therefore, were not entitled to the benefit claimed by them is totally unreasonable and irrational.

4. We have heard learned counsel for the appellants and perused the record of the case with his able assistance.

5. It is no longer *res integra* that the statutory period under Section 13B of the Act of 1955 can be waived off in the facts and circumstances of a particular case. A two Judge Bench of the Hon'ble Supreme Court in **Amardeep Singh Vs. Harveen Kaur 2017 (4) RCR (Civil) 608**, speaking through Justice Adarsh Kumar Goel has held that for waiving the statutory period under Section 13B (2) of the Act of 1955, the following conditions are to be satisfied/fulfilled:-

- “(i) the statutory period of six months specified in Section 13B (2) of the Hindu Marriage Act in addition to the statutory period of one year under Section 13B (1) of the Hindu Marriage Act of separation of the parties is already over before the first motion itself;*
- (ii) all efforts for mediation and 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 of will only prolong their agony.”*

6. Since Section 13B (2) of the Hindu Marriage Act is not mandatory, but the same is directory, the period of six months can be waived off, subject to the satisfaction of the Court in the given circumstances. In the instant case, the parties have finally decided to part ways after exhausting all the efforts to reconcile, which have proved to be futile. In case the statutory period is not waived off, it will only prolong their agony. Therefore, keeping in view the facts and circumstances of the present case, the statutory period is waived off.

7. Today, a joint statement by way of affidavit dated 02.11.2023 is submitted by both the parties wherein they reiterated that the joint statement made by them on affidavit be read as their statements on first and second

motion for all intents and purposes. The said joint statement is taken on record.

8. As per the joint statement, both the parties have resolved their dispute amicably and decided to part ways by dissolving their marriage by way of mutual consent under Section 13B of the Act of 1955. The appellant No.1 has already received Rs.4 lakhs from appellant No.2 as past, present and future alimony. Moreover, all dowry articles have already been exchanged by the parties and both the appellants have resolved not to claim anything from each other or their respective families. It is also resolved that appellant No.1 would not claim any share from the property of appellant No.2 and both the parties will not initiate any further proceedings against each other. It is further submitted therein that both the parties have given their joint statement on affidavit of their own free will and without any pressure or coercion.

9. In view of the settlement arrived at between the parties and recital of terms and conditions in the joint affidavit/statement dated 02.11.2023, the present appeal is allowed. Resultantly, the impugned order dated 11.04.2023 passed by the learned Family Court is set aside. The marriage between the parties is dissolved and a decree of divorce by mutual consent is ordered to be granted. Consequently, the decree for dissolution of marriage by mutual consent be drawn.

(SUDHIR SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

November 02, 2023

Pankaj*

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No