

2023:PHHC:106581

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4036-2023 (O&M)

Date of Decision: August 17, 2023

Tarun Vij alias Tanu

...Petitioner No.1

And

Jasmeen alias Juhi

...Petitioner No.2

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Dinesh Trehan, Advocate
for petitioner No.1.

Mr.Jagtar Singh, Advocate for
Mr.Munish Puri, Advocate
for petitioner No.2.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 10.07.2023 (Annexure P-3), passed by learned Principal Judge, Family Court, whereby the joint application (Annexure P-2) filed by the parties for seeking waiver of the statutory period of six months for recording the statements of second motion, has been declined.

The material facts of the case are as follows:-

That marriage of Tarun Vij @ Tanu and Jasmeen @ Juhi was solemnized on 24.06.2020. After marriage, both of them resided together as husband and wife but no child was born from their wedlock. However, on account of differences in taste and temperaments, there was no possibility of living together as husband and wife and as a result, they are residing

separate since September 2020.

Considering the broken status of their marriage, they had filed petition under Section 13-B of the Hindu Marriage Act in 2023. The statements of first motion were recorded on 15.05.2023 and case was further adjourned to 17.11.2023, for recording of the statements of second motion. However, during the pendency of the petition, a joint application was filed by both the petitioners, thereby seeking waiver of statutory wait of six months.

Vide impugned order dated 10.07.2023, the above-said application for seeking waiver of statutory wait of six months, was dismissed.

Feeling aggrieved by the aforesaid order, the present petition has been filed by the petitioners.

Now, the counsel for the petitioners has submitted that due to temperamental incompatibility, they could not live together and as such, they are residing separate since September 2020. Considering the broken status of the marriage, divorce petition by mutual consent was filed. All terms of separation have been settled. Also, it is submitted that the total amount, which was agreed to be paid by petitioner No.1 to petitioner No.2, as permanent alimony was to the extent of Rs.3,75,000/-. Out of the said settled amount, an amount of Rs.1,45,000/- was paid to petitioner No.2 by petitioner No.1 and the residue amount of Rs.2,30,000/- was agreed to be paid, at the time of recording of statements of second motion. However, it is submitted that at the time of filing of the application for seeking waiver of

statutory waiting period, a draft of the residue amount, in the name of Jasmeen was also handed over to petitioner No.2.

Now, in the light of the aforesaid, it is submitted that the parties are living separate since September 2020 and all efforts made to save their marriage, proved futile. All terms of separation, by and large, have been complied with. They have also submitted that marriage between the parties has irretrievably broken and there are chances of re-settlement of both the petitioner. As such, it is submitted that six months' waiting period be waived off.

In *Amardeep Singh vs. Harveen Kuar, 2017 (8) SCC 746*, 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 13-B(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.”

In ***Amit Kumar vs. Suman Beniwal, 2022(1) RCR (Civil) 569***, the Hon'ble Apex Court has 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, further 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 non-starter. 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, adverting to the case in hand, it is pertinent to mention that statements of the parties of first motion were recorded on 15.05.2023, copies whereof, have been placed on record by learned counsel for the petitioners. Perusal of the same reveals that both the petitioners have categorically stated about there being sharp and irreconcilable differences between them regarding taste, habits and temperaments and, as such, they could not live together. Also, it was stated by both the petitioners that they are living separate since September 2020. All efforts made with the intervention of respectables and relatives to effect reconciliation, proved futile. Now, they have agreed to dissolve their marriage. Also, in their respective statements, they have stated about the amount settled for the payment of permanent alimony and future expenses to be Rs.3,75,000/-, out of which, Rs.1,45,000/- was paid by petitioner No.1 to petitioner No.2, at the time of recording of first motion statements and the residue amount of Rs.2,30,000/- was agreed to be paid, at the time of recording of statements of second motion.

At this juncture, it is pertinent to mention that in the application filed for waiving off the statutory period of six months, it has been categorically stated that the amount of Rs.2,30,000/- has been paid to petitioner No.2, by way of demand draft, copy whereof has been placed on record as Annexure P-4.

Perusal of the statements of the parties to the list, further reveals that they have also agreed to withdraw all the litigations between them, vis-a-vis, said matrimonial alliance.

Thus, it is evident from the statements of both the petitioners that the matter relating to their separation has been settled. They are living separate nearly for the last about three years and seemingly, there is no chance of their living together. All disputes relating to permanent alimony etc. have since been settled and keeping in view the young age of the petitioners and also, they being well-educated, there are chances of re-settlement of the parties.

Considering the same, no malafide on the part of the parties to the lis, is evident.

In view of the aforesaid circumstances and also considering the observations made in *Amit Kumar's case (supra)* by the Hon'ble Supreme Court, the impugned order dated 10.07.2023 is set aside. The next date before the Court below is 17.11.2023. In the given circumstances, the parties are directed to make appearance before the Court below on 28.08.2023 and learned Court below shall prepone the case and record the statements of the parties of second motion, more particularly, with regard to the receipt of draft of the residue amount of settled amount, to the extent of Rs.2,30,000/- and to decide the petition.

The revision petition stands allowed accordingly.

August 17, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No