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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of Decision: August 07, 2023

Simran Kaur

...Petitioner No. 1

And

Jhirmal Singh

...Petitioner No. 2

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

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

SANJAY VASHISTH, J.

1. Present revision petition is directed against the order dated 03.07.2023 (Annexure P-5), passed by the Court of learned Principal Judge, Family Court, Amritsar, in CM No. 326 of 2023, instituted on 03.05.2023, titled as "Simran Kaur and Jhirmal Singh", vide which, application for condoning the cooling period of six months for grant of divorce by way of mutual consent, under Section 13-B of the Hindu Marriage Act, 1955 (hereafter referred to as 'the H.M.A., 1955'), has been dismissed.

2. Brief facts of the case are that Simran Kaur (petitioner No. 1-wife) and Jhirmal Singh (petitioner No. 2-husband) got married with each other as per Sikh rites and traditions, on 19.07.2016, at Gurudwara Shri Guru Singh Sabha, Bangkok. No child was born out of said wedlock. Due to temperamental differences, and their respective habits, relations between petitioner No. 1 and petitioner No. 2 got strained and resultantly they both started living separately w.e.f. 25.10.2021. Despite making best of the efforts

by the parents and relatives from both the sides, bitterness in their relations could not be diluted.

3. Initially, one divorce petition, under Section 13 of the H.M.A., 1955; bearing No. HMA-2054-2022, dated 29.10.2022, was filed by petitioner No. 1-wife against petitioner No. 2-husband. During the pendency of said petition, matter between the parties was amicably settled and both of them decided to file a joint divorce petition, under Section 13-B of the H.M.A., 1955. Resultantly, already pending divorce petition No. HMA-2054-2022, was withdrawn on 13.05.2023 before the National Lok Adalat. One joint divorce petition, under Section 13-B of the H.M.A., 1955, bearing No. HMA-559-2023 (Annexure P-1), was filed on 31.03.2023/01.04.2023.

4. First motion statements of Simran Kaur (petitioner No. 1-wife), and that of Yadwinder Singh, who is Special Power of Attorney of petitioner No. 2-husband, in the aforementioned joint divorce petition were recorded on 01.04.2023 (Annexures P-2 P-3, respectively), and the matter was adjourned to 07.10.2023, for recording the second motion statements of the parties.

5. Both the parties were living separately since 25.10.2021, and there was no possibility of reconciliation of the matter, it is claimed that they amicably settled all their matrimonial disputes regarding alimony, maintenance etc., and even all the articles/other belongings of both the parties are stated to have been exchanged between each other. Nothing is left due or pending towards each other in relation to the said marriage.

6. On 03.05.2023, parties to the *lis* filed a joint application, bearing

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No. CM-326 of 2023, seeking waiving off statutory period of six months, as specified under Section 13-B(2) of the H.M.A., 1955. However, said application was dismissed by learned Trial Court, vide impugned order dated 03.05.2023 (Annexure P-5). Hence, present revision petition has been filed by petitioner No. 1-wife and petitioner No. 2-husband.

7. Learned counsel submits that petitioner No. 1-wife is just 26 years old, whereas age of petitioner No. 2-husband is 47 years; marriage between them has already become purposeless, and subsistence thereof any further, would only prolong the agony of the parties, inasmuch as, there is no chance of reconciliation or reunion of the parties; and that both petitioner No. 1-wife and petitioner No. 2-husband want to start their life afresh, which they can't do until their existing marriage is dissolved, by way of grant of decree of divorce.

Learned counsel further submits that petitioner No. 2-husband (Jhirmal Singh) is a permanent resident of 3423N, US WHY 131, ELMIRA, MICHIGAN, ZIPCODE 49730, USA, and presently he is in India, whose departure to go back to USA depends upon the decision of joint divorce petition, i.e. after the time as and when his second motion statement before the Court is recorded. Thus, counsel for the petitioner has prayed for waiving off the cooling period of six months between the first motion statement and second motion statement.

In support of his submissions, learned counsel for the petitioner has placed reliance upon the judgment passed by Hon'ble Apex Court in the case of Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746, and a recent

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judgment passed by this Court in the case of Ravaldeep Kaur v. Gurjeet Singh (CR No. 4006 of 2023, decided on 19.07.2023).

8. Having considered the nature of controversy, facts of the present case, as well as settled principles of law, there being no necessity to issue notice to any other party in the present petition, I propose to dispose of the same today itself.

9. Merely on the basis of averments made and arguments advanced by learned counsel for the petitioners, present petition cannot be allowed, as the deliberation on the issue of law involved in the present petition is required to be addressed.

10. Marriage between the parties was solemnised on 19.07.2016. However, no child was born out of the said wedlock. Due to temperamental differences, they are living separately since 25.10.2021. A joint divorce petition by way of mutual consent, under Section 13-B of the H.M.A., 1955, has already been filed by petitioner No. 1-wife and petitioner No. 2-husband on 31.03.2023/01.04.2023. First motion statement of the parties was recorded before learned Trial Court on 01.04.2023 itself and the matter stands adjourned to 07.10.2023, for recording the second motion statements of the parties. Relevant portion of the first motion statement of petitioner No. 1-wife, recorded on 01.04.2023, reads as under:-

“We have been residing separately from each other since 25.10.2021. Dispute arose between us and now we cannot pull on our matrimonial life on account of our temperamental difference. We have decided to take divorce. All the claims of my permanent alimony and permanent maintenance regarding past, present and

future have been amicably settled between both the petitioners.

All the claims regarding Istridhan/Dowry articles/gifts and gold have been settled/exchanged with each other for one only. If any case is pending between each other, same will be withdrawn before the second motion statement. I shall be bound by the terms and conditions of the petition. There is no cohabitation between both the parties during the said period. I have made my statement voluntarily without any pressure or undue influence and inducement. Decree of divorce may kindly be granted in our favour.”

First motion statement, on similar lines, was also made on behalf of petitioner No. 2-husband, by his Special Power of Attorney - Yadwinder Singh.

11. Pending adjudication of the joint divorce petition, which is listed before learned Trial Court for 07.10.2023, for recording of second motion statements of the parties, a joint application dated 03.05.2023 (Annexure P-4), under Section 13-B(2) of the H.M.A., 1955, was filed, for condoning the cooling period of six months, which has been dismissed by learned Trial Court, vide impugned order dated 03.07.2023 (Annexure P-5), primarily on the ground that except for separation, no justifiable ground or reasoning has been given that in case application is not allowed by waiving off cooling period of six months, how further mental agony would be caused to the parties.

12. It has come on record that both the parties are living separately since 25.10.2021, i.e. for the last 1 year 9 months and 13 days as on date. Despite making best of the efforts by the parents and relatives from both the sides, bitterness in their relations could not be diluted. Ultimately, it was realised that both the petitioners cannot live together under one roof, and it was

decided that their marriage be got dissolved as the same has reached to the stage of no chance of reconciliation.

13. After taking a final call, a compromise was also effected. As per the compromise, petitioner No. 1-wife has already received all her articles from petitioner No. 2-husband, and no other claim is left pending, requiring any decision in future time. Resultantly, a joint divorce petition, under Section 13-B of the H.M.A., 1955, was instituted on 31.03.2023/01.04.2023 (Annexure P-1). Thereafter, a joint application for waiving off the cooling period of six months was moved on 03.05.2023.

14. Learned Trial Court has rightly observed that except for separation of over 18 months, no other ground of urgency was pointed out in the application, for waiving off the cooling period of six months, however, during the course of arguments learned counsel for the petitioners has specifically stated that petitioner No. 1-wife is just 26 years old and wants to choose better options for her future life. Moreover, petitioner No. 2-husband, who is also permanent resident of United State of America, is at present available in India and his departure also depends upon the fate of joint divorce petition. Thus, it is evident that future of both the petitioners is uncertain till the pendency of divorce petition in regard to their first marriage.

15. In the case of **Amardeep Singh (supra)**, Hon'ble Apex Court has held that '*the condition of cooling off period of six months' is directory in nature and not mandatory*. It is further held that the object of Section 13-B of the H.M.A., 1955 is to enable the parties to dissolve their marriage by way of

mutual consent, if the same had irretrievably broken down; to enable them to rehabilitate again; that the cooling off period was to safeguard against a hurried decision but if there was otherwise no possibility of reconciliation, the same could be waived; the object of Section 13-B of the H.M.A., 1955 was not to perpetuate a purposeless marriage or to prolong the agony of the parties; and that when the Court was satisfied that there was no chance of reconciliation, the Court should not be powerless in enabling the parties to have a better option.

16. In the case of **Ravaldeep Kaur (supra)**, both husband and wife, after marriage cohabited with each other only for three days, i.e. less than 100 hours, and due to incurable differences decided to dissolve the marriage by filing a joint petition under Section 13-B of the H.M.A., 1955. Their application for waiving off cooling period of six months was rejected by learned Trial Court and revision petition was filed before this Court. Following the dictum of Hon'ble Apex Court in the case of **Amardeep Singh (supra)**, the said petition was allowed by this Court. Somewhat similar views were also expressed in the cases of **Niti Arora v. Rohit Vij**, 2009 (2) R.C.R. (Civil) 457, and **Anilesh Yadav v. Swati Yadav** (CR No. 6356 of 2018, decided on 24.09.2018).

17. While applying the spirit of the judgments in the cases of **Amardeep Singh (supra)**, **Ravaldeep Kaur (supra)**, **Anilesh Yadav (supra)** and **Niti Arora (supra)** in the facts and circumstances of the case in hand, it is found that after marriage, which was solemnized on 19.07.2016, both the parties

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stayed together upto 25.10.2021 and thereafter, started living separately from each other. After marriage and separation, first divorce petition (HMA-2054-2022, under Section 13 of the H.M.A., 1955, was instituted by petitioner No. 1-wife on 29.10.2022, which was dismissed as withdrawn on 13.05.2023 before National Lok Adalat, and a joint divorce petition, under Section 13-B of the H.M.A., 1955, was filed on 31.03.2023/01.04.2023, whereas application for waiving off cooling period of six months was instituted on 03.05.2023, which was dismissed vide impugned order dated 03.07.2023, by the learned Trial Court.

18. Present petition also came up for hearing today, i.e. on 07.08.2023. From the averments made in the mutual divorce petition it is also clear that all the articles have already been received back by the petitioner No. 1-wife from petitioner No. 2-husband, and they have also entered into a compromise. Another fact which emerges from the mutual divorce petition is that petitioner No. 2-husband is residing in USA, and he is presently available in India for recording of his second motion statement.

19. This Court has also gone through the averments made in the joint application for *waiving off cooling period of six months*. It has been pleaded by the parties in para No. 6 that “***the waiting period is only going to prolong the agony of the parties to the present petition. Both the petitioners are young and have amicably decided to dissolve their marriage by mutual consent, so as to lead separate lives and move forward in their own separate endeavour of life***”.

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20. Presently, both of them are living separately for the last **01 year 09 months and 13 days**. This Court is well conscious of the legal issue that at least a period of **one year and six months** in total should be completed from the date of marriage, including one year after separation of their company. In the present case, this condition is otherwise fulfilled by the parties.

Thus, my views are fortified with the ratio of the judgment of Hon'ble Apex Court in **Amardeep Singh's case**, as also views expressed by this Court in the cases of **Ravaldeep Kaur (supra)**, **Anilesh Yadav (supra)** and **Niti Arora (supra)**.

21. As a result of the above discussion, impugned order dated 03.07.2023 (Annexure P-5), passed by learned Principal Judge, Family Court, Amritsar, is set aside. Learned Trial Court is directed to waive off the statutory period as envisaged under Section 13-B(2) of the H.M.A., 1955. However, Trial Court would satisfy itself regarding compliance of the term or condition, if any, to be fulfilled between the parties. Accordingly, present **revision petition is allowed and disposed of**.

(SANJAY VASHISTH)
JUDGE

August 07, 2023

Pk Kapoor

Whether Speaking/Reasoned: ✓YES/NO

Whether Reportable: ✓YES/NO