

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M No.176 of 2018(O&M)
Date of Decision: 28.07.2023

Pritpal Singh
Vs
Parveen Kaur
.....Appellant
.....Respondent

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

Present:Mr. P.S. Punia, Advocate
for the appellant.

Mr. Rakesh Gupta, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

CRM No.12814-CII of 2023

This is an application under Section 13-B of the Hindu Marriage Act, 1955 for waiving period of six months. The statements of the parties in first motion have already been recorded on 19.07.2023. The petition under Section 13 of the Act has already been converted into a petition under Section 13-

B of the Act vide order dated 19.07.2023. In compliance of the order dated 19.07.2023, the present application has been filed seeking to waive off the requisite period of six months for recording second motion in petition under Section 13-B of the Hindu Marriage Act. The parties have entered into an amicable settlement as per terms and conditions of the settlement/compromise. Total sum of Rs.30 lacs was to be paid to the respondent-wife. Out of the aforesaid amount, an amount of Rs.18 lacs has already been paid to her.

On 03.07.2023, an amount of Rs.10,70,000/- was paid to the respondent-wife vide cheque bearing No.007598 dated 03.07.2023. Learned counsel for the respondent submits that the amount has already been encashed. The remaining amount of Rs.1,30,000/- was paid to the respondent-wife vide demand draft bearing No.007599 dated 19.07.2023. Learned counsel for the respondent submits that the aforesaid amount has already been encashed by the respondent-wife. As of now, the total amount of Rs.30 lacs has been received by the respondent-wife towards permanent alimony for past, present and future for the respondent-wife and minor daughter. Today, both the parties are present along with their counsel.

Admittedly, the parties are living separately since April, 2015. The discretion to waive off the period of six months is a guided discretion for considering the best interest of the parties,

where there is no chance of resolution and the parties have already separated for a longer period or contesting litigation in different Courts of law. The parties have amicably resolved that they will withdraw all the pending litigation *inter se* between them. The Court has to consider the period for which the parties have been married, duration of their separation, duration of pending litigation and any other pending litigation between them. On this front, the compromise entered into between the parties has to be genuine compromise, without any pressure or coercion and the same should take care of permanent alimony, custody of child (if any) to the satisfaction of the Court.

In the instant case, the parties have taken conscious decision by means of an understanding between them before the Mediation and Conciliation Centre of this Court. The provision has been made for permanent alimony to the satisfaction of the parties. The husband has already paid the amount so proposed and settled.

Evidently, the present compromise has satisfied all the ingredients wherein the issue of alimony has been suitably answered in favour of the respondent-wife as well as for the minor daughter. The minor daughter shall remain with the respondent-wife and she would be lawful guardian of the minor daughter. The Court has to be satisfied that the parties are living separately for more than statutory period and all efforts at

Mediation and Conciliation Centre have been tried for reconciliation have failed. The resolution has been fructified only for parting ways for which terms and conditions have been reduced into writing. The parties successfully struck a compromise to their satisfaction.

Keeping in view the period of separation since April 2015 and the parties have no chance of any reconciliation, except to part ways, we deem it appropriate to waive off the statutory period under Section 13-B(2) of the Hindu Marriage Act after noticing that the conditions are duly satisfied i.e. parties are living separately for more than one year, statutory period of six months specified under Section 13-B(2) of the Act in addition to the statutory period of one year under Section 13-B(1) of the Hindu Marriage Act of separation of the parties is already over before the first motion itself. All the efforts for Mediation and Conciliation Centre and additional efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) and 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. The parties have genuinely settled their differences including alimony, custody of child or any other pending litigation between them.

In view of the aforesaid circumstances, waiting period will only prolong their agony for which indulgence can be

granted by this Court in waiving or condoning the same. Section 13-B(2) of the Hindu Marriage Act is not a mandatory condition, rather the same is directory and the period of six months can be waived off subject to the satisfaction of the Court on the basis of aforesaid ingredients.

Since the marriage is a broken marriage, therefore, cooling off period would be futile. The marriage was solemnized on 24.02.2013 according to 'Anand Karaj'. The marriage was consummated and a female child took birth on 21.08.2014 and thereafter, due to temperamental differences, the parties started living separately w.e.f. 21.04.2015, therefore, in view of judgment rendered by the Hon'ble Apex Court in **Amardeep Singh Vs. Harveen Kaur, 2017(4) RCR(Civil) 608**, we deem it appropriate to waive off the statutory period of six months. The application is accordingly allowed.

Main case

The joint statement of the parties in second motion has been recorded and the same is attached herewith. In view of waiving off statutory period of six months and recording of first motion on 19.07.2023, the petition under Section 13-B of the Hindu Marriage Act is allowed. The marriage between the parties is dissolved. A decree of divorce by way of mutual consent is ordered to be granted. Consequently, a decree for

dissolution of marriage by mutual consent be drawn. The earlier decree stands substituted with this consequent decree by mutual consent.

(RAJ MOHAN SINGH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

28.07.2023

Prince

Whether speaking/reasoned Yes/No

Whether reportable Yes/No