

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.777 of 2024

Shilpi Rani, Daughter of Akhileshwar Prasad, and Wife of Mithilesh Kumar Singh, Resident of Karma Road, Sarvodaya Nagar, Near Lal Bhawan, P.S. - Town, District- Aurangabad.

... .. Petitioner/s

Versus

Mithilesh Kumar Singh, Son of Ram Pravesh Singh, Resident of Mohalla- Jharkhand Mor, Bhula, P.S. Bank More, District- Dhanbad, State of Jharkhand.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vinay Ranjan, Advocate Mr. Praveen Kumar, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 21-08-2024

The matter has been taken up on mentioning being made on behalf of the petitioner.

2. Heard learned counsel for the petitioner and I intend to dispose of the petition at the admission stage itself.

3. The instant petition has been filed under Article 227 of the Constitution of India against the order dated 27.06.2024 passed by learned Principal Judge, Family Court, Aurangabad in Matrimonial Case No. 179 of 2024, whereby and whereunder the learned Family Court admitted the case and recorded the first motion and directed for statement of parties on second motion fixing 24.12.2024 as next date.

4. Learned counsel for the petitioner submits that



the learned Family Court has passed the order in violation of the directions of the Hon'ble Supreme Court in the case of ***Amardeep Singh Vs. Harneet Kaur*** reported in ***(2017) 8 SCC 746*** passed in Civil Appeal No. 11158 of 2017 dated September 12, 2017. Learned counsel further submits that the Hon'ble Supreme Court in the case of ***Amardeep Singh*** (*supra*) has held that while the court dealing with a matter is satisfied that a case is made to waive out the statutory period under Section 13B(2), it can do so and certain guidelines have been issued. However, the learned Family Court did not consider this aspect of the matter and in mechanical manner passed the order for second motion fixing a date after six months of the first motion. Earlier while the bail petition of the respondent has been pending before learned Sessions Judge, Aurangabad, the matter was compromised between the parties and in terms of compromise the respondent agreed to make payment of Rs.18,00,000/- (Eighteen lakhs) to the petitioner in installment and subject to the payment and other terms, the parties were directed to move for dissolution of marriage by filing a petition under Section 13B of the Hindu Marriage Act for divorce by mutual consent. Accordingly, Matrimonial Case No. 179 of 2024 has been filed. Learned counsel further submits that in the said compromise it



was also decided that the parties would withdraw their cases which they have been fighting against each other. Learned counsel further submits that irretrievable break down of the marriage has taken place and there is no possibility that the parties will again cohabit and continuation of matrimonial case is not possible. Learned counsel also referred to the decision of the Hon'ble Supreme Court in the case of *Shilpa Sailesh Vs. Varun Sreenivasan* reported in **2023 SCC OnLine 544** passed in Transfer Petition (Civil) No. 118 of 2014 wherein the Hon'ble Supreme Court has held that the court has the discretion to dissolve the marriage by passing a decree of divorce by mutual consent without being bound by the procedural requirement to move the second motion. Thus, learned counsel submits that the learned Family Court was required to put the matter for second motion forthwith to make the parties free from further harassment and mental agony.

5. Perused the record.

Section 13B of the Hindu Marriage Act reads as:-

“13B. Divorce by mutual consent.-

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was



solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]”

Sub-section 2 of Section 13B provides for a cooling off period of six months after the first motion is made by the parties and the Hon’ble Supreme Court in the ***Amardeep Singh*** (*supra*) has held in paragraphs 18, 19, 20 and 21 as under:-

“18. In determining the question whether provision is mandatory or directory, language alone is not always decisive. The court has to have the regard to the context, the subject-matter and the object of the provision. This principle, as formulated in Justice G.P. Singh's Principles of Statutory Interpretation



(9th Edn., 2004), has been cited with approval in Kailash v. Nanhku [Kailash v. Nanhku, (2005) 4 SCC 480] as follows : (SCC pp. 496-97, para 34)

“34. ... ‘The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oftquoted passage Lord Campbell said: “No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered.”’” (p. 338)

“For ascertaining the real intention of the legislature’, points out Subbarao, J. ‘the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered’. If object of the enactment



will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory.” (pp. 339-40)

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 13-B(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 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 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.

21. Needless to say that in conducting such proceedings the court can also use the medium of videoconferencing and also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reason as may satisfy the court, to advance the interest of justice.”

6. In the present case marriage has been solemnized on 13.11.2019. The compromise between the parties resulted in passing of order dated 11.06.2024 by the learned Sessions Judge and the learned Sessions Judge enlarged the respondent on provisional bail while putting condition for acceptance of bail bond on making payment in terms of compromise entered into parties. Be that as it may, the compromise has taken place between the parties only in the year 2024. It has been submitted by learned counsel for the petitioner that the parties have been living separately since 2020. Mere compromise to end the matrimonial relationship does not mean the condition put under Section 13B(2) should be waived *suo motu* by the learned



Family Court without giving proper opportunity of the parties for reconciling their differences. In the case of *Amardeep Singh (supra)*, it has been made a condition that waiver application would be moved by the parties after a week from the first motion. Even in the case of *Amardeep Singh (supra)*, there is no blanket power conferred upon courts to waive the statutory period of six months in all cases as the waiver could be only under certain conditions. I fail to understand how the petitioner has approached this Court by filing the present petition without filing any application for waiver. Admittedly no such application has been filed before the learned Family Court. Moreover, the contents of compromise incorporated in the order dated 11.06.2024 by the learned Sessions Judge shows a number of conditions and filing of petition under Section 13B is one of the conditions. But that does not mean that every dispute has been settled because the consideration of the same would be in the domain of the Family Court and could not be decided by the learned Sessions Judge. There is no finding on the record that the efforts for reconciliation have been made by the Family Court as provided under the mandates of the Hindu Marriage Act. Hence, even the conditions mentioned in the case of *Amardeep Singh (supra)* are not forthcoming from the record.



So far as reliance placed on the case of ***Shilpa Sailesh*** (*supra*) is concerned, the same is not applicable in the facts of the present case as the case of ***Shilpa Sailesh*** (*supra*) was mainly concerned with authority of the Hon'ble Supreme Court under Article 142 of the Constitution of India and even the reference of ***Amardeep Singh*** (*supra*) case was with regard to the orders passed by the Hon'ble Supreme Court under the said Article. Hence, the ratio of ***Shilpa Sailesh*** (*supra*) is not at all applicable in the present case.

7. Since the petitioner has approached this Court without moving application before the learned Family Court seeking waiver of the period of second motion, the present petition is certainly premature and even on merits as discussed hereinbefore the prayer for waiver of period of second motion could not have been granted.

8. In recent past a tendency has developed to approach this Court under Article 227 of the Constitution of India without considering the factual aspects and the merits underlying therein and such tendency needs to be curbed with heavy hands. The present case is one such instance. The marriage has been solemnized on 30.11.2019 and the parties are at litigating terms for three years. The matrimonial petition was



taken up for the first time on 25.06.2024 and first motion was recorded on 27.06.2024. There has been no efforts for reconciliation between the parties. In this background claim that the marriage has irretrievably broken down and the statutory period should be waived is simply not sustainable. Moreover, no application for waiver has been filed and the petitioner rushed to this Court showing undue haste. Filing of petitions in such manner needs to be deprecated in strong terms.

9. Therefore, in the light of discussion made herein before, I do not find any merit in the present petition and hence, the same is dismissed with cost of Rs.10,000/- to be deposited in the Patna High Court Legal Services Committee within three weeks from today.

10. If the cost is not deposited within the stipulated period, the learned Family Court is directed to put on hold the further proceeding in Matrimonial Case No. 179 of 2024.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.08.2024
Transmission Date	NA

