



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

18 WRIT PETITION NO. 3371 OF 2024

GANESH ASHOK SABALE

VERSUS

VAISHNAVI W/O GANESH SABALE

...

Advocate for the Petitioner : Mr. Arvind Ramnath Kawade

Advocate for Respondent : Mr. P. A. Pisal

...

CORAM : ARUN R. PEDNEKER, J.

DATE : 01st APRIL, 2024

PER COURT:

1. Heard.
2. By the present petition the petitioner seeks to challenge the order dated 22.02.2024, below Exhibit 8, in HMP No.66/2024, passed by the 8th Joint Civil Judge (Senior Division), Aurangabad, thereby rejecting the joint application filed by the petitioners and the respondent under Section 13(B)(2) of the Hindu Marriage Act, 1955 to waive of the 6 months cooling period.
3. Brief facts giving rise to the petition can be summarised as under:-

A. The petitioner and the respondent married on 14.02.2022, as per the hindu rituals. There is no child born out of the wedlock.

B. On 30.05.2022, the petitioner and the respondent on account of the matrimonial dispute started living separately. Thereafter, there were various attempts made by the family members and well wishers to reach out settlement in the marriage and reconcile the parties. However, the parties could not come together.

C. Since the parties were residing separate for more than a year and, that, there is no reconciliation between them, they file HMP No.66/2024 before the Civil Judge Senior Division, Aurangabad under Section 13(B) of the Hindu Marriage Act, 1955 for divorce by mutual consent.

D. The matter was then referred to the mediator, however, the mediator could not bring the settlement between the parties.

E. On 15.02.2024, both the parties i.e. the petitioner and the respondent filed their affidavits and evidence on record along with application seeking waiver of

6 months statutory cooling period. The trial court by order dated 22.02.2024, rejected the application. Hence, the writ petition is filed in this court.

4. It is contended by the parties that the Hon'ble Supreme Court in the case of Amardeep Singh Vs. Harveen Kaur, (2017) 8 SCC 746 submits that the stipulated period of cooling can be waived in certain circumstances and relies on para 18 and 21 as under:-

“18. 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 13B (2), it can do so after considering the following:

i) the statutory period of six months specified in Section 13B (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 XXXIIA Rule 3 Code of Civil Procedure / 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.

21. Since we are of the view that the period mentioned in Section 13B (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.”

5. The parties submits that they have settled their dispute that in terms of the above requirement the parties have already separated for 1 year. Thereafter, after filing of the petition all efforts for mediation has failed and the court appointed mediator also could not bring about the reconciliation in the matter. There are no issues out of the marriage and that the alimony aspect is also settled between the parties. The waiting period will only prolong their agony and that this court should exercise the powers under Section 13(B)(2) of the Hindu Marriage Act, 1955 and to waive of the cooling period.

6. Both the parties were present before me and were identified by the respective advocates.

7. On my interaction between the parties, the parties have submitted that there is no coercion and that no children out of the marriage, so also, the alimony is already been decided and that she has already received the part of the alimony and the balance would be received at the final stage of the Petition.

8. In view of the submissions, I feel that this is a fit case to exercise discretion for waiving cooling period. In the result, I pass the following order:-

ORDER

I] The Writ Petition is allowed.

II] The impugned order dated 22.02.2024 passed below Exhibit-8 by the learned 8th Joint Civil Judge (Senior Division), Aurangabad in the HMP No.66/2024 is quashed and set aside.

III] The application at Exhibit – 'A' of the writ petition is allowed.

9. The Writ Petition stands disposed of accordingly.

[ARUN R. PEDNEKER, J.]

marathe