



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 WRIT PETITION NO. 3178 OF 2024

RAMESHWAR ROHIDAS CHAVHAN

VERSUS

RAJANI RAMESHWAR CHAVHAN

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Advocate for the Petitioner : Mr. Jitendra Vijay Patil

Advocate for Respondent :

Mr. Kunal Kale h/f. Mr. Bhushan S. Dhawale

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CORAM : ARUN R. PEDNEKER, J.

DATE : 01st APRIL, 2024

PER COURT:

1. This court, on 28.03.2024, passed the following order:-

“1] Heard the learned counsel for the parties.

2] The marriage between the petitioner and respondent was solemnized on 16.10.2021. Due to certain dispute between the parties, the petitioner and respondent lived separated from 10.08.2022. Thereafter, on 19.01.2024, both the parties have filed petition for divorce by mutual consent under Section 13 (B) of the Hindu Marriage Act, 1955. On 06.02.2024, the parties jointly filed an affidavit for waiver of mandatory period of six months as contemplated under Section 13 (B) (2) of the Hindu Marriage Act, 1955. The said application is rejected by the impugned order dated 06.02.2024. Being aggrieved by the said order, the present writ petition is filed.

3] The learned counsel for the parties submit that the present writ petition is covered by the judgment of the Hon’ble Supreme Court in the case of Amardeep Singh Vs.

Harveen Kaur reported in [2017] 8 SCC 746 and submits that cooling off period can be waived. The Hon'ble Supreme Court in the case of Amardeep Singh [supra] has held at para 16, 18 and 21 is as under :

“16. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of cooling of the period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.

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.”

4] In terms of the parameters laid down by the Hon’ble Apex Court in the case of Amardeep Singh [supra], this Court is empowered to exercise the powers of waiver of period mentioned in Section 13 (B) (2) of the said Act. The statutory period of six months specified in Section 13B (2) is in addition to the statutory period of one year under Section 13 B (1) of separation of parties which is already over and all efforts for mediation / conciliation including efforts in terms of Order XXXIIA Rule 3 of Code of Civil Procedure Code / Section 23 (2) of the Act / Section 9 of the Family Courts Act were unscrupulously made to settle the matter. In the case of Amardessp Singh [supra] the Court is required to satisfy itself that the parties have genuinely settled their differences including alimony, custody of child or any other pending issue between the parties.

5] The learned counsel for the parties submit that the petitioner and respondent have presented the petition for divorce mutually. They were referred to the Mediator to settle their disputes and the respondent-wife will receive back gifts given by her. The learned counsel for the parties submits that 6 months waiting period will only prolong their agony.

6] In view of the above, this Court needs to ascertain aforesaid fact and to verify whether there is coercion or that

there is no issue of any further alimony that should be received by the respondent-wife and that there is no coercion of third party interest involved in the matter so also it is necessary to ascertain whether waiting for six months will prolong their agony.

7] The parties are directed to remain present before this Court on 1st April, 2024 so as to ascertain the aforesaid facts.

8] List this matter on 01.04.2024 at 10.30 a.m.”

2. In pursuance of the order passed by this court dated 28.03.2024, the parties remained present today before this court. I have verified from the parties that there is no coercion and the aspect of alimony is already covered. The respondent would be entitled to the gold received by her. There are no issues from the marriage, as such, this court can exercise its powers under section 13(B)(2) of the Hindu Marriage Act, 1955, as it is the fit case where I can exercise my powers and exercise discretion from waiving of the six (06) months cooling period.

3. In the result, I pass the following order:-

ORDER

I] The Writ Petition is allowed.

II] The impugned order dated 06.02.2024 below Exhibit 8 in Petition F No.20/2024, passed by the learned Family Court, Jalgaon is quashed and set aside.

III] The application at Exhibit – ‘C’ is allowed.

4. The Writ Petition stands disposed of accordingly.

[ARUN R. PEDNEKER, J.]

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