

rrpillai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6612 OF 2024

1. Tejas Dilip Barmecha

Age : 27 years, Occ : Job

R/a. Grand by Society A, 4/901

Shewalwadi, Manjari

Hadpsar, Pune, Maharashtra-410 028

2. Sakshi Subhash Gatagat

Age : 26 years, Occ : Job

R/a Room No. 3, Yogeshwar Society

Wadgaon, Pune-411 014

..... Petitioners

Vs.

The State of Maharashtra

(Through Chief Government Pleader

High Court A. S. Bombay)

..... Respondent

Mr. Mateen Shaikh a/w. Mr. Suresh Jadhav, Ms. Manisha Khawade and

Ms. Muskan Shaikh.

Mr. Aloka A. Nadkarni, Respondent for the State.

Digitally
signed by
RAJESHWARI
RAMESH
PILLAI
Date:
2024.08.21
10:21:54
+0530

CORAM : GAURI GODSE, J.

DATE : 9th AUGUST 2024

ORAL JUDGMENT:

1. Heard. Rule. Rule made returnable forthwith. By consent of the parties, taken up for final disposal.

2. This petition takes exception to the order passed by the Family Court, Pune, on 23rd April 2024, rejecting the petitioners' application for waiver of the cooling off period provided under section 13–B of the Hindu Marriage Act, 1955 ('the said Act'). The petitioners got married on 26th November 2022 as per Hindu rituals in Pune. It is the petitioners' case that there were differences between them within a few days of their marriage. Hence, they started residing separately since 21st February 2023.

3. Learned counsel for the petitioners submitted that though their well-wishers, friends and family members made reconciliation attempts, they failed, and ultimately, they decided to seek a divorce by mutual consent. Hence, petitioners filed a petition for dissolution of their marriage by mutual consent in the Family Court at Pune. Since

the parties had already been residing separately since 21st February 2023, they also filed an application for waiver of the six months period and requested for a decree for the dissolution of their marriage. The Family Court rejected the said application on 23rd April 2024. Hence, this petition.

4. Learned counsel for the petitioners submitted that in spite of making attempts, parties were unable to reconcile their differences, so they decided to apply for dissolution of their marriage. He further submitted that it was impossible for the parties to reside together. Hence, they applied for a waiver of the statutory period. He further submitted that the learned Judge of the Family Court rejected the application on the ground that there is no separation of the parties for the period of eighteen months on the date of filing the petition.

5. Learned counsel for the petitioner submitted that the learned Judge of the Family Court referred to the decision of the Apex Court in the case of *Amardeep Singh Vs Harveen Kaur*¹; however, failed to properly appreciate the legal principles laid down by the Apex Court.

¹ (2017) 8 Supreme Court Cases 746

6. Learned counsel for the petitioners submitted that on the date of filing the petition for divorce, the petitioners were already residing separately for more than a year. He submitted that since there was no possibility of any reconciliation, the petitioners applied for a waiver of the cooling off period of six months. Learned counsel thus submitted that the learned Judge of the Family Court ought to have correctly appreciated the legal principles settled by the Hon'ble Supreme Court in the decision of *Amardeep Singh*, and allowed the application for waiver of the waiting period of six months. He submits that there is no possibility of any reconciliation; hence, the application for waiver be allowed, and the parties be granted an order of dissolution of their marriage.

7. In view of the aforesaid, the petition was taken up for final disposal. The learned Judge of the Family Court rejected the application for waiver of the cooling off period of six months on the ground that the parties have not been residing separately for 18 months on the date of filing the petition. The learned Judge ought to have correctly applied the settled legal principles. An application for

waiver of the cooling off period is erroneously rejected on the ground that on the date of filing the petition, there was no separation of eighteen months. The learned Judge ignored that the parties were residing separately for more than one year on the date of filing the petition and thus applied for a waiver of the six months waiting period.

8. The guiding principles in the Supreme Court's decision in the case of ***Amardeep Singh*** need to be correctly understood and applied to achieve the object of the provision of Section 13-B of the said Act. The Hon'ble Supreme Court has observed that the object of the waiting period was to provide a safeguard against a hurried decision, if there was otherwise a possibility of reconciliation. By relying upon the legal principles settled in the decision of the Hon'ble Supreme Court, this Court, in a recent decision in the case of ***Sneha Akshay Garg and Another Vs Nil***² held as under:

"8. The guiding principles in the Supreme Court's decision in the case of Amardeep Singh need to be correctly understood and applied to achieve the object of the provision of Section 13-B of the said Act. The Hon'ble Supreme Court has observed that the object of the

2 2024 SCC Online Bom 2513

waiting period was to provide a safeguard against a hurried decision, if there was otherwise a possibility of reconciliation. Thus, the waiting period is a precautionary provision to avoid any injustice to any party and rule out the possibility of reconciliation. Thus, the purpose of the waiting period needs to be correctly understood while deciding the application for a waiver. Seeing the rapid changes in an evolving society, the judiciary would play a vital role in assisting the parties seeking the dissolution of their marriage by mutual consent. Thus, keeping in mind the changing social conditions, a realistic approach needs to be adopted.

9. Normally, we come across cases where parties continue to fight, though there is no possibility of reconciliation. In such cases, the parties are encouraged to explore the possibility of an amicable settlement and are even referred for mediation so that they can put an end to the litigation. However, when the parties apply for divorce by mutual consent, they have taken a conscious decision to separate and thus have shown a reasonable approach. Such a decision shows that they have decided to move ahead, and thus, there is every chance of rehabilitation. The newly married couple not being able to reside together, or a couple married for quite some time

is unable to continue to stay together for various reasons, itself would be a mental agony. Thus, once the Court is satisfied that the parties have taken a conscious decision to separate and move ahead and that there is no possibility of reconciliation, the Court should adopt a realistic approach and exercise the discretion to waive the waiting period. Hence, it is the duty of the Court to assist the parties by exercising the discretion to waive the cooling off period and free them from the stress of their application for divorce remaining pending.”

9. In the present case, I have interacted with both the petitioners who appeared before me today through video conferencing. On making a specific query regarding the possibility of reconciliation, both the petitioners submitted that they are unable to sort out their differences and have made a conscious decision to separate. They further submitted that in spite of making several efforts, they were unable to reconcile their differences and would not be able to stay together. The petitioners further informed that they both are well settled in their independent professions, and the pendency of the petition is causing mental agony. Hence, they requested that the cooling off period be waived and an order for dissolution of their

marriage be also passed by this Court. The petitioners submitted that they had no claim or any grievance against each other and that the order be passed for the dissolution of their marriage by waiving the waiting period.

10. Petitioner no. 1 is 27 years of age, and petitioner no. 2 is 26 years of age. They started residing separately within a few days of their marriage. There is no issue born from the wedlock. As stated by them, both are independently well-settled in their profession. On interacting with the petitioners and considering the reasons stated by them in the application for waiver of the cooling off period, I am satisfied that the parties are unable to reconcile and have, therefore, decided to separate. Thus, I am satisfied that the pendency of the petition would cause mental agony and that there is no point in keeping the marriage petition pending. In view of the aforesaid, I am also satisfied that there is no possibility of any reconciliation. Thus, to avoid any further loss of time, I am not inclined to relegate the parties to the Family Court for passing the order on the main application under section 13–B(1) of the said Act. Hence, considering the facts of the

case, I find it appropriate to take a pragmatic view and not send the parties to the Family Court only for the purpose of passing a final order. If only for a technical purpose, the parties are relegated to the Family Court, the very object of making an application for dissolution of marriage under section 13-B(1) and the application for a waiver under section 13-B(2) would be frustrated.

11. Considering the facts of the case, the view taken by this Court in the decision of ***Sneha Akshay Garg*** would squarely apply to the present case. Hence, I find it fit to exercise the jurisdiction under Article 227 of the Constitution of India to correct the impugned order by waiving the waiting period and also pass further orders for the dissolution of the marriage.

12. For the reasons stated above, the following order is passed:

ORDER

(I) The impugned order dated 23rd April 2024 below Exhibit-8 passed by the learned Judge, Family Court No. 1, Pune in Petition No. F-360/2024 is quashed and set aside.

(II) Application at Exhibit 8 in Petition No. F-360/2024 filed before the Family Court No. 1, Pune, for six months waiver under section 13-B(2) of the said Act is allowed, and the six months waiting period is waived.

(III) The application for dissolution of marriage under Section 13-B of the said Act in Petition No. F-360/2024 filed before Family Court No. 1, Pune is allowed.

(IV) Marriage solemnized between the parties on 26th November 2022 is dissolved.

(V) The Family Court, Pune, shall draw a decree for divorce in terms of the dissolution of marriage granted by this order.

(VI) The concerned Judge of the Family Court at Pune shall issue necessary directions for drawing up the decree in terms of this order upon the production of a certified copy of this order without insisting on the parties' presence.

(VII) The writ petition is allowed in the aforesaid terms.

13. Rule made absolute in the above terms.

[GAURI GODSE, J.]