

2024:PHHC:077016



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-3027-2024(O&M)

Date of Decision: May 29, 2024

Simranjeet Kaur Khaira

...Petitioner No.1

And

Chamkaur Singh Khaira

...Petitioner No.2

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Kanwaljeet Singh, Advocate
along with petitioner No.1-in person.

Mr.Satvir Singh, Advocate
along with petitioner No.2-in person.

ARCHANA PURI, J.

CM-9776-CII-2024

The present application has been filed for early hearing of the main case i.e. CR-3027-2024, which is fixed for 10.07.2024.

CR-3027-2024 has been filed for setting aside the order passed by learned Principal Judge, Family Court, whereby, an application filed for waiving off the cooling period of six months, in a petition under Section 13B of the Hindu Marriage Act, was dismissed.

Keeping in view the same, the instant application is allowed and the main case is preponed and taken up today itself.

Main Case

Challenge in the present revision petition is to the order dated

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12.04.2024 (Annexure P-6) passed by learned Principal Judge, Family Court, on the application filed by the petitioners to waive off the cooling period of six months, which was dismissed.

The material facts, to be noticed, are as follows:-

That, both the petitioners had filed a petition under Section 13B of the Hindu Marriage Act, for seeking dissolution of their marriage, by way of mutual consent. Copy of the petition has been placed on record as Annexure P-1.

It is evident from the contents of the said petition that the marriage was solemnized between the parties on 17.01.2017 and one daughter was born from their wedlock, who is 5 years old and is presently in the custody of petitioner No.1-wife. However, due to different habits and temperaments, they could not adjust with each other and as a result thereof, they are residing separate since January 2023 and till date, they have not resumed the cohabitation. Also therein, it is stated that due to breakdown of matrimonial relationship, there is no chance or likelihood of resumption of cohabitation. Also, it is stated therein that sincere efforts were made by relatives, friends and well-wishers, to save the said relationship, but however, it proved futile. Now to give quietus to the matrimonial bickering, the petition under Section 13B of the Hindu Marriage Act was filed and all terms of separation and custody of the child, have also been settled between them.

On filing of the petition under Section 13B on 07.03.2024, the statements of the parties of first motion were recorded, wherein, in their

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respective statements, they have reiterated their version, with regard to the temperamental incompatibility and as a result thereof, they were unable to continue with this matrimonial alliance. Furthermore, they also stated about compromise having effected between them and terms of the separation having settled and complied with.

After recording of the aforesaid statements, the case was adjourned further for 19.09.2024, for recording of statements of second motion.

Before the date fixed by the Court, an application was filed by the petitioners for waiving off/condoning the period of six months, for moving the second motion under Section 13B(2) of the Hindu Marriage Act and the same was dismissed by learned Family Court, vide impugned order dated 12.04.2024.

Feeling aggrieved by the aforesaid order, the present revision petition has been filed.

Now, both the counsel for the petitioners have submitted, in unison, that due to incompatibility and different temperaments, the petitioners could not live together and they are residing separate since January 2023. Also, it is pointed out that sincere efforts were made, with regard to their reconciliation, but the same proved futile and considering the broken status of the marriage, the petition for seeking divorce by mutual consent was filed. Also, it is submitted that all terms of separation have been settled between the parties and complied with by them. Therefore, it is submitted that it is in the interest of both the petitioners, to waive off six



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months waiting period, more particularly, when the petitioners are residing separate since January 2023 i.e. for more than 15 months. The waiting period of six months shall only prolong their agony.

In view of the submissions made, suffice to make reference to the decision rendered in ***Amardeep Singh vs. Harveen Kuar, 2017 (8) SCC 746***, wherein, the Hon'ble Supreme Court had given certain conditions to be considered by the Courts, while dealing with such applications and the same are herein given:-

“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 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 32A 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 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.”

Furthermore, beneficial reference is made to decision rendered by the Hon'ble Apex Court in the case of ***Amit Kumar vs. Suman Beniwal, 2022(1) RCR (Civil) 569***, wherein, it has been held that factors mentioned in ***Amardeep's (supra)***, are illustrative and not exhaustive. It was held as herein given:-

“21. The factors mentioned in Amardeep Singh v. Harveen Kaur (supra), in Paragraph 19 are illustrative and not exhaustive. These are factors which the Court is obliged to take note of. If all the four conditions mentioned above are fulfilled, the Court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13B (2) of the Marriage Act.

22. The Family Court, as well as the High Court, have misconstrued the judgment of this Court in Amardeep Singh v. Harveen Kaur (supra) and proceeded on the basis that this Court has held that the conditions specified in paragraph 19 of the said judgment, quoted hereinabove, are mandatory and that the statutory waiting period of six months under Section 13B (2) can only be waived if all the aforesaid conditions are fulfilled, including, in particular, the condition of separation of at least one and half year before making the motion for decree of divorce.

23. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. A judgment is not to be read in the manner of a statute and construed with pedantic rigidity. In Amardeep Singh v. Harveen Kaur (supra), this Court held that the statutory waiting period of at least six months mentioned in Section 13B (2) of the Hindu Marriage Act was not mandatory but directory and that it would be open to the Court to exercise its discretion to waive the requirement of Section 13B(2), having regard to the facts and circumstances of the case, if there was no possibility of reconciliation between the spouses, and the waiting period would serve no purpose except to prolong their agony.”



Further, in the same case, further it was observed as herein given:-

“27. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13B (2) of the Hindu Marriage Act, the Court would consider the following amongst other factors:

(i) the length of time for which the parties had been married;

(ii) how long the parties had stayed together as husband and wife;

(iii) the length of time the parties had been staying apart;

(iv) the length of time for which the litigation had been pending;

(v) whether there were any other proceedings between the parties;

(vi) whether there was any possibility of reconciliation;

(vii) whether there were any children born out of the wedlock;

(viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.

28. In this Case, as observed above, the parties are both well-educated and highly placed government officers. They have been married for about 15 months. The marriage was a non-starter. Admittedly, the parties lived together only for three days, after which they have separated on account of irreconcilable differences. The parties have lived apart for the entire period of their marriage except three days. It is jointly stated by the parties that efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife. Even after over 14 months of separation, the parties still want to go ahead with the divorce. No useful purpose would be served by making the parties wait, except to prolong their agony.”

Now, advertng to the case in hand, it is pertinent to mention

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that on that very day, when the petition under Section 13B of the Hindu Marriage Act was filed, the statements of the parties of first motion were recorded. Perusal of the said statements reveal that categorically the petitioners have stated about the factum of marriage having taken place on 17.01.2017 and further, about they living separate since January 2023, on account of temperamental incompatibility and mal-adjustment. Furthermore, also they deposed about there to be no chance of reconciliation between them, though, there was intervention by the relatives etc. Also further, they have deposed that the matter has now been compromised and all terms of separation have been settled between them and no other case is pending between the parties. They had also given undertaking that they shall not file any case against each other in future. They also categorically stated that the said statements are made without inducement, threat or promise.

Both the petitioners were present, at the time, when the hearing was given in the present case. On query by the Court, both the petitioners have categorically stated that their marriage is a broken marriage, on account of temperamental incompatibility and there is no inclination, on the part of either of them, to reconcile with each other and continue with the marriage. Also, they deposed that the waiting period shall only prolong their agony.

Thus, from the statements got recorded by the petitioners, at the time of first motion and also considering the interaction, which they had in the Court, it is evident that the marriage between the parties is broken



marriage and there is no chance of revival of matrimonial relationship. Rather, all terms of separation have been settled and complied with. In these circumstances, when the parties are living separate for the last more than 15 months, the waiting period, for recording of the statements of second motion, shall prolong the agony of the parties, more particularly, when they are young and there are chances of re-settlement.

Considering the aforesaid fact situation, the present revision petition is hereby allowed and the impugned order is set aside. The parties are directed to make appearance before learned Family Court concerned on 31.05.2024 and on appearance of both the petitioners, on that very day, learned Family Court shall record of their statements of second motion and decide the case.

May 29, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No