



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3254-2024(O&M)
Date of Decision: May 28, 2024

Vikrant Yadav
...Petitioner No.1

And

Asha
...Petitioner No.2

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Ms.Rashi Shahrawat, Advocate
for the petitioners.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 15.05.2024 passed by learned Principal Judge, Family Court, whereby, a joint application filed by the petitioners for waiving off the cooling period of six months under Section 13(B)(2) of the Hindu Marriage Act, was dismissed.

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

That, initially, both the petitioners-Vikrant Yadav and Asha had filed a petition under Section 13(B)(1) of the Hindu Marriage Act, thereby, seeking dissolution of the marriage by a decree of divorce, by mutual consent.

That, marriage between the parties had taken place on 09.03.2023, at Manesar, Gurgram. After the marriage, both of them resided together as



husband and wife, but no issue was born from their wedlock. However, they are living separate since 01.04.2023. Despite best efforts of common relations, friends and their own endeavours, they could not reconcile. Now, there is no possibility of living as husband and wife and as such, both of them decided to dissolve the marriage by way of decree of divorce and have amicably settled their matrimonial dispute, differences and claims against each other. With the intervention of elders, a Memorandum of Understanding dated 24.07.2023 was reduced, the detail whereof, are reproduced in paragraph No.5 of the divorce petition, copy whereof is Annexure P-2.

After filing of the said petition on 03.04.2024, statement of first motion was recorded on the same very day, wherein, apart from deposing about the factum of marriage, they had also deposed that due to temperamental differences, they could not adjust with each other and they have decided to dissolve their marriage. Also, they categorically deposed that they are living separate since 01.04.2023 and further also proved the MoU, which is Ex.P1. Further, they had deposed about not indulging into any further litigation, on the basis of this matrimonial alliance and that they shall never resile from the statements in the Court and they prayed for decree of divorce. After recording of the said statements, the case was adjourned for 05.10.2024, for recording of the statement of second motion of the parties.

However, before the said date fixed, a joint application was filed, thereby, making a prayer for waiver off statutory period of six months,



specified in Section 13(B)(2) of the Hindu Marriage Act. However, the said application was dismissed vide impugned order dated 15.05.2024.

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

Now, learned counsel for both the petitioners submitted that due to incompatibility and different temperaments, the petitioners could not live together. They stayed together only for a period of about one month and they are residing separate from each other, since 01.04.2023. Furthermore, it is stated that considering the broken status of the marriage, divorce petition by mutual consent was filed. All terms of separation were duly complied.

In the given circumstances, it is submitted that learned Family Court has erroneously dismissed the application for seeking waiver off period of six months. It has been erroneously observed that no plausible ground has been shown in the application by the parties regarding reconciliation. In fact, learned counsel while making reference to the contents of the petition under Section 13(B) as well as the statements got recorded by the petitioners, at first instance, has categorically submitted that efforts were made for reconciliation, but however, it could not be effected.

At this juncture, beneficial reference is made to decision rendered in ***Amardeep Singh vs. Harveen Kuar, 2017 (8) SCC 746***, wherein, the Hon'ble Supreme Court has held as 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, reference is made to judgment delivered 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 that perusal of joint statement of the parties of first motion, got recorded on 03.04.2024, which is on the Court file, reveals that both the petitioners categorically stated that due to temperamental differences, they could not adjust with each other and decided to dissolve their marriage. Furthermore, they have also stated about the MoU having prepared, which is Ex.P1 and further, about having made statement not to be indulging in any kind of litigation, with regard to this matrimonial dispute.



Both the petitioners, seemingly, are well educated and from their joint statement, it is evident that the matter relating to their separation, has been settled between them. Also, it is evident that it is a broken marriage. Rather, it is a non-starter. They have settled their claims qua separation, on account of irreconcilable differences.

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 30.05.2024 and on appearance of both the petitioners before the said Court on that very day, the Family Court shall record of the statements of second motion and decide the case.

May 28, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No