



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

138

CR-3803-2024
Date of Decision: 11.07.2024

Manpreet Singh

....Petitioner

Versus

Swarna Rani

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Malkiat Singh Hundal, Advocate
for the petitioner.

VIKAS SURI, J.(Oral)

1. Prayer in this revision petition filed by petitioner – Manpreet Singh under Article 227 of the Constitution of India is for setting aside order dated 15.05.2024 (Annexure P-5) passed by Principal Judge, Family Court, Ferozepur, Camp at Guruharsahai, whereby the joint application seeking waiver of statutory period under Section 13-B of Hindu Marriage Act, 1955, (for short, ‘the Act’) was dismissed.
2. Briefly, as per the pleadings, marriage of the parties was solemnized on 13.12.2021 according to Sikh rights and ceremonies. The petitioner-husband is aged about 23 years, whereas the respondent-wife is aged about 34 years. The parties lived together and cohabited with each other as husband and wife and out of the said wedlock, one female child namely

Afreen @ Assesdeep Kaur was born. The child is presently residing with the respondent-wife and as such is under her care and custody. It is pleaded that from the very beginning of the marriage, on account of temperamental differences, both the petitioner and respondent did not develop cordial relationship with each other. It is further submitted that the respondent-wife is an Advocate by profession and has custody of the girl child. The parties filed a joint petition under Section 13-B of the Act, for dissolution of marriage by decree of divorce by way of mutual consent on 06.03.2024. The first motion statements of petitioner as well as respondent were recorded on the same day of presenting the aforesaid petition. The petitioner-husband and respondent-wife have voluntarily deposed that they are living separately since January 2023, as there are sharp and irreconcilable differences regarding taste, habits and temperament. It is further deposed that all the efforts of respectables and relatives for reconciliation have proved futile and the parties have mutually decided to get the marriage dissolved by a decree of divorce. It is further deposed that permanent alimony and other ancillary expenses have already been paid in lump-sum and the articles given at the time of marriage to either side have already been exchanged and at present, nothing is due against each other. The petitioner-husband has also deposed in his statement at first motion that custody of the minor child shall remain with respondent-wife, i.e. mother of the minor, and he will not claim her custody in future. After having recorded the statements of the parties at first motion, the case was adjourned to 11.09.2024 for recording of statement of parties at second motion.

3. The petitioner-husband and respondent-wife thereafter filed a joint application seeking waiver of the statutory period of six months stipulated under Section 13-B(2) of the Act. In the said joint application, it was pleaded by the parties that they have been living separately for more than one year and due to temperamental differences and strained relations, they cannot live together as husband and wife. The parties are still young and both want to perform their marriage and move on in life.

4. The learned Principal Judge, Family Court, dismissed the said application vide order dated 15.05.2024 (Annexure P-5), by observing that the Court cannot go beyond the provisions of Section 13-B of the Act, vide which, the statutory period of six months has been provided to the parties to reconsider their decision.

5. At this Stage, Mr. Jagrej Singh, Advocate puts in appearance on behalf of the respondent-wife and has filed his power of attorney in the Court, which is taken on the record.

6. Learned counsel for the respondent-wife affirms the aforesaid position and submits that the respondent-wife is also desirous of re-marriage and wants to move on in life. It is further submitted that being well educated and responsible citizens, their decision to part ways is a well considered decision, which was arrived at after having taken into account future life prospects of the parties, permanent alimony, maintenance for the education and upbringing of the child in a peaceful environment and her future.

7. Heard learned counsel for the parties and perused the record with their able assistance.

8. In the present case, perusal of the record shows that the marriage of the parties was solemnized on 13.12.2021 and from their wedlock, one female child was born, who is living with her mother i.e. respondent herein. The respondent-wife is an Advocate by profession and is well conversant with her legal rights and those of her daughter. Further perusal of the deposition of petitioner-husband and respondent-wife at first motion, placed on record as Annexure P-2 and Annexure P-3, respectively, show that the mutual agreement arrived at between them is a result of deliberation and the relevant factors have been thought of and provided for. Both the parties have stated that being young and still of marriageable age, they want to perform marriage and want to move on in life.

9. The issue raised in the present case is whether the statutory period of six months stipulated under the provisions of Section 13-B(2) of the Act, could be waived by the Family Court or not. The said question is no longer *res integra*. The Hon'ble Supreme Court in ***Amardeep Singh vs. Harveen Kaur***, (2017) 8 SCC 746, held that the waiting period enshrined under Section 13-B(2) of the Act, is directory and can be waived by the Court where proceedings are pending. Further, the Court while considering the aforesaid aspect should consider the following questions:

- “(i) How long parties have been married?
- (ii) How long litigation is pending?
- (iii) How long they have been staying apart?
- (iv) Are there any other proceedings between the parties?
- (v) Have the parties attended mediation/conciliation?

- (vi) Have the parties arrived at genuine settlement which takes care of alimony, custody of child or any other pending issues between the parties?”

10. The aforesaid judgment was considered by a Constitution Bench of the Hon’ble Supreme Court in ***Shilpa Sailesh vs. Varun Sreenivasan***, 2023(3) RCR (Civil) 107, wherein after noticing ***Amardeep Singh’s case*** (supra), their Lordships held as thus:-

“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 13-B(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 32-A 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.

11. In the present case, perusal of the impugned order would show that neither of the relevant considerations expounded by the Apex Court have even been considered by the learned Family Court. On the contrary, the Family Court has shrugged its responsibility to give a judicious consideration to the aspects on which waiver of statutory period of six months has been prayed for by the parties, simply by observing that the Court cannot go beyond the provisions of Section 13-B of the Act.

12. In view of the above discussion, the impugned order dated 15.05.2024 (Annexure P-5) is not sustainable.

13. In the light of the above, the impugned order dated 15.05.2024 (Annexure P-5) is set aside and the matter is remanded back to the concerned Family Court to consider the application afresh in the light of the *dicta* of the judgments rendered by the Hon'ble Supreme Court, noticed hereinabove.

14. The parties are directed to appear before the concerned Family Court on 31.07.2024 at 10:00 a.m.

15. It is expected that keeping in view the nature of the relief sought in the aforesaid application, the same would be disposed of expeditiously by the learned Family Court.

16. The revision petition is disposed of in the aforesaid terms.

(VIKAS SURI)
JUDGE

July 11, 2024

Varinder Prashad

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No