



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

132

CR-3881-2024

Date of Decision.:15.07.2024

Rekha

.....Petitioner

Vs.

Raj Kumar

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rahul Jaswal, Advocate
for the petitioner.

DEEPAK GUPTA, J. (ORAL)

Petitioners have approached this Court with the prayer to set aside order dated 08.07.2024 (Annexure P-3) passed by learned Additional Principal Judge, Family Court, Panipat, whereby application moved by the petitioners seeking waiver of six months of cooling off period in a petition under Section 13-B of the Hindu Marriage Act was dismissed.

2. Learned counsel contends that marriage between the two petitioners was solemnized on 28.06.2012. Two children were born out of this wedlock. On account of temperamental differences between the parties, they could not enjoy the marital bliss further and started living separately ever since 10.08.2018. All efforts for re-conciliation and re-union made by their parents, family members, well-wisher and friends and also by the petitioners themselves failed, yielding no fruitful result. Consequent thereto,



CR-3881-2024

-2-

the two petitioners entered into a compromise and agreed for seeking a decree of divorce by mutual consent. They then filed petition under Section 13-B of the Hindu Marriage Act on 13.05.2024, copy of which is Annexure P-1. Their statement of the first motion was recorded on 14.05.2024 and the Court then adjourned the case to 16.11.2024 for recording statement of the petitioners on second motion. Petitioners moved an application on 08.07.2024 praying to waive of the period of the six months for second motion. However, said application has been declined.

3. Learned counsel contends that since petitioners are residing separately ever since August, 2018 i.e. for the last approximately 06 years and agreed to get the marriage dissolved by mutual consent, there was no justification for the trial Court concerned to decline the request to waive of the waiting period of 06 months.

4. Learned counsel has referred to ***“Amardeep Singh v. Harveen Kaur” AIR 2017 (8) SCC 746***, wherein it was held by Hon’ble Supreme Court that waiting period of 06 months as mentioned in Section 13-B(2) of the Hindu Marriage Act is not mandatory and that it is only advisory.

5. Ironically the authority relied by learned counsel for the petitioners has also been cited by the trial Court in its impugned order and it is observed that the statutory period can be waived of when all efforts of mediation or reconciliation have failed and there is no likelihood of success in that direction and that waiting period will prolong the agony. By

**CR-3881-2024****-3-**

observing that parties had two children and that there might be chances of reconciliation, the trial Court has declined the request to waive of the period.

6. After hearing learned counsel, this Court is of the view that impugned order cannot be sustained. As is clearly stated in the petition under Section 13-B of the Hindu Marriage Act (Annexure P-1) that petitioners had started residing separately ever since 10.08.2018, due to their temperamental differences. All efforts to resolve differences and for uniting the parties failed despite efforts made by the family of the two parties, friends etc. In the petition itself, it is further mentioned that with the intervention of the respectables, parties agreed to take divorce by mutual consent. All other terms and conditions for taking the divorce by mutual consent were also agreed to.

7. In the aforesaid facts and circumstances, when both the parties have already executed a Memorandum of Understanding amongst them settling all the terms and conditions, including about the custody of the minor children; and considering the fact that they are already residing separately since 2018, there was no justification to decline the request of the petitioners, so as to waive the waiting period. As such, it is held that it was a fit case for the concerned Family Court to exercise its jurisdiction in favour of the petitioners so as to waive of the waiting period.

8. Revision is accordingly allowed by setting aside the impugned order dated 08.07.2024 in DMC-385-2024. Consequently the statutory



CR-3881-2024

-4-

waiting period of 06 months shall be duly waived. Parties are at liberty to approach the concerned Family Court for advancement of their case on the strength of this order and to seek appropriate fresh order.

**(DEEPAK GUPTA)
JUDGE**

July 15, 2024

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No