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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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Date of decision : 10.09.2024

Shivani Sharma

... Petitioner

Versus

Rahul Sharma

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Rohit Kumar, Advocate
for the petitioner.

Mr.Deepak Sharma, Advocate
for the respondent.

VIKAS BAHL, J.(ORAL)

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 25.07.2024 (Annexure P-1) passed by the Additional Principal Judge, Family Court, Faridabad, Haryana, in case titled as “Rahul Sharma vs. Shivani Sharma” petition no. HMA/1109 of 2024 vide which the application for waiving off 6 months cooling period and recording second motion and passing the decree of divorce has been dismissed.
2. Learned counsel for the petitioner-wife and the respondent-husband have jointly submitted that in the present case, a joint petition was filed by the petitioner and the respondent under Section 13B of the Hindu Marriage Act, 1955 for grant of divorce by mutual consent. It is submitted

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that the husband is serving as a soldier in the Indian Air Force, Pathankot and the wife is well educated and they had got married on 08.12.2022 and had started residing separately since 20.12.2022 and thus, have resided with each other for merely 12 days. It is further submitted that no child has been born out of their wedlock. It is stated that on 02.07.2024, when the said petition under Section 13B of the Hindu Marriage Act came up for hearing, a joint statement was recorded on behalf of the petitioner and the respondent to the effect that due to temperamental differences, the petitioner and the respondent could not adjust themselves and since December 2022, there was no co-habitation between them. It was further stated in the said statement that the efforts made by their relatives and friends for their reunion have also failed and there was no possibility of any reunion and all disputes between them have been settled amicably by way of compromise deed Ex.C1(Annexure P-3) with respect to past, present and future maintenance and permanent alimony and it was undertaken by both the parties that they would be bound by the terms and conditions of the said Ex.C1. It was further stated that the said joint statement made by them was without any pressure, coercion or influence from any corner and a prayer was made by them that their marriage be dissolved by way of decree of divorce by mutual consent. A photo copy of the said joint statement dated 02.07.2024 has been handed over by the learned counsel for the parties during the course of hearing and the same is taken on record as Mark A.

3. In addition to the said fact, both the counsel have also referred to the compromise / settlement deed dated 30.06.2024 (Annexure P-3) to

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highlight the fact that it has been specifically stated therein that the marriage between the parties took place on 08.12.2022 and they have been residing separately since 20.12.2022 and that the relatives and friends of both the parties have tried their level best to persuade the parties to live together but the same has not fructified and the marriage has irretrievably broken down due to irreconcilable differences in temperament and there are no chances of their cohabiting together in future. One of the terms and conditions has also been highlighted wherein it has been specifically stated that both the parties have no objection in case the second motion is moved early by seeking waiver of six months waiting period between the two motions and that both the parties have also decided that they will not interfere in the lives of each other and all claims have been amicably settled including the claims with respect to Stridhan, jewelry and other moveable and immovable property as well as permanent alimony etc.

4. It is further jointly argued that on 02.07.2024 after recording the joint statement, the matter was adjourned to 06.01.2025 i.e. after the statutory period of six months and thereafter the application dated 25.07.2024 (Annexure P-5) was jointly filed by the petitioner and the respondent for waiving off the 6 months statutory period and for recording the second motion and for passing the decree of divorce. It has been pointed out that even in the said application, the factum of the parties residing separately since 20.12.2022 and also the fact that all efforts for reconciliation have failed and that there were no chances of reunion, were again highlighted but however, the said application has been rejected by the



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Additional Principal Judge, Family Court, vide impugned order dated 25.07.2024. On the basis of above said facts and circumstances, it has been jointly prayed that the present petition be allowed and the application filed by the petitioner be also allowed and the Family Court be directed to record the statement in second motion expeditiously. In support of the arguments, reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case titled as "***Amit Kumar vs. Suman Beniwal***" ***Civil Appeal no.7650 of 2021 decided on 11.12.2021.***

3. This Court has heard the learned counsel for the parties and has perused the paper book.

4. Section 13B of the Hindu Marriage Act, which provides for divorce by mutual consent, requires that before filing a petition under the said provision, the parties should be residing separately for a period of one year or more. The said condition is met in the present case inasmuch as it is the admitted case of the parties, which is apparent from the pleadings as well as the compromise deed and the joint statement of the parties that they have been residing separately since 20.12.2022 and the petition was drafted on 02.07.2024 i.e. after a period of more than 1 year and 6 months of separation. The second condition which has been mentioned in Section 13B is that the second motion is to be made not earlier than six months after the date of the presentation of the petition and not later than 18 months after the said date. The Hon'ble Supreme Court in the case of ***Amit Kumar (supra)*** had observed that the Hon'ble Supreme Court in the case of ***Amardeep Singh vs. Harveen Kaur*** reported as ***(2017)8 SCC 746*** had observed that in



case the Court was satisfied that a case was made out to waive the statutory period under Section 13B(2) of the Hindu Marriage Act, it could do so and there were certain factors which were required to be considered in the said regard. It was further observed that the statutory waiting period of 6 months mentioned in Section 13B(2) of the Hindu Marriage Act was not mandatory but directory and it was open to the Court to exercise its discretion to waive the said requirement having regard to the facts and circumstances of the case. In the case of ***Amit Kumar (supra)*** where the parties were married for only 15 months and lived together for only 3 days, it was observed by the Hon'ble Supreme Court that the marriage was a nonstarter and that the parties had made efforts for reconciliation and that the parties were unwilling to live together as husband and wife and thus, no useful purpose would be served by making the parties wait and the delay would only prolong their agony and in view of the said facts and circumstances, the Hon'ble Supreme Court had allowed the appeal and set aside the order of the High Court as well as Family Court and while exercising its power under Article 142 of the Constitution of India, granted the appellant and respondent a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act by waiving off the statutory period of 6 months under Section 13B(2) of the said Act. The relevant portion of the said judgment is reproduced hereinbelow:-

*“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.*

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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.

29. The appeal is, therefore, allowed. The impugned order dated 17 th November, 2021 passed by the High Court and the impugned order dated 12th October, 2021 passed by the Family Court, Hissar are set aside.”

5. The facts of the present case are quite similar to the facts of the case before the Hon'ble Supreme Court in the case of **Amit Kumar (supra)** inasmuch as in the present case also, as is apparent from the pleadings, joint statement, compromise deed, it is the admitted case of the parties that



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marriage had taken place on 08.12.2022 and they have been residing separately since 20.12.2022 and thus, have resided only for a period of 12 days and the marriage was a nonstarter and no child was born out of said wedlock. It has further been averred and argued by both sides that since 20.12.2022, they have not resided together and all the claims including the claim regarding maintenance, permanent alimony etc. have been settled and there is no dispute left between the parties and it has been decided that both the parties would not interfere in the lives of each other and that they would be free to marry again with whomever they want. It has been specifically averred and also stated in in the joint statement that the relatives and friends of both the parties had tried their level best to persuade the parties for reconciliation but the same has failed and the marriage between the parties has irretrievably broken down due to temperamental differences. Further the petition under Section 13B of the Hindu Marriage Act has been filed after a period of 1 year and 6 months (18 months) from the date the parties have been residing separately i.e. since 20.12.2022. It is the common case of the parties that any further delay would further prolong their agony and in view of the above, even the conditions as have been cited in the case of ***Amit Kumar (supra)*** have also been met in the present case.

6. Keeping in view the above said facts and circumstances, the present petition is allowed and the order dated 25.07.2024 is set aside and the parties are permitted to move an application for preponing the case which is now listed for 06.01.2025 before the Family Court and on their doing so, the Family Court would prepone the main case and would give a



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date within 14 days of the moving of the said application for recording the statement of both the parties with respect to the second motion and in case the parties record the said statement in consonance with their pleadings/ settlement and their earlier statement, then the Family Court would pass the necessary final order in the petition under Section 13B of the Hindu Marriage Act, in accordance with law.

(VIKAS BAHL)
JUDGE

September 10, 2024.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No