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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6203-2024
Date of decision: 24.10.2024

Anwar

...Petitioner

Versus

Suman Rani

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Saurabh Sharma, Advocate and
Mr. Ramanpreet, Advocate for the petitioner.

Mr. Hitesh Ghai, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 07.09.2024 (Annexure P-5) passed by the Principal Judge, Family Court, Bathinda vide which the application filed by the respondent in case No.DMC/922/2024 for waiving off the statutory period of six months between the statements qua first motion & second motion in proceedings under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter to be referred as “the 1955 Act”), has been dismissed.
2. Learned counsel for the petitioner-husband as well as respondent-wife have jointly submitted that in the present case, the petitioner and respondent have filed a joint petition under Section 13-B of the 1955



Act for dissolution of marriage by way of a decree of divorce on the ground of mutual consent as provided under Section 13(B)(1) of the 1955 Act as amended by Marriage Laws Amendment Act, 1976 and in the said joint petition dated 23.07.2024, which has been annexed as Annexure P-1 along with the present revision petition, it was stated that the marriage was solemnized between the parties on 12.05.2014 at Chandigarh according to Hindu rites and ceremonies and the marriage was also registered at Chandigarh and a copy of the Marriage Certificate as well as affidavit was attached thereto. It is further argued that it was specifically pleaded in para 5 of the said joint petition that the petitioner and respondent have been living separately for the last more than 1 ½ years due to indifferent attitude and temperaments and that there was no probability or possibility of their living together as husband and wife. It is further highlighted that in para 6, it was further averred that with the intervention of the relatives and respectable people of the locality, a compromise had been arrived at between the parties and they had decided to dissolve the marriage by mutual consent as it would serve no useful purpose to continue the marriage or marital relations as the marriage was broken down and there was no possibility of reconciliation.

3. It is argued that it was averred in para 8 that the petitioner-husband would pay a sum of Rs.10,00,000/- to the respondent-wife as past, present and future alimony in lump sum which would be paid before the Court at the time of making of final statement by the petitioner. The averments made in para 12 with regard to non-reconciliation have also been highlighted. It is further submitted that the said averments were reiterated in the statements made by the petitioner and respondent on 23.07.2024. It is



submitted that there is no child of the petitioner and respondent and there is no possibility of their living together and thus, an application was filed by the wife to dispense with/waive off the period of six months but however by virtue of the impugned order, the same had been dismissed. It has been fairly pointed out that the earlier application filed by the petitioner and respondent for waiving off the said period was dismissed at that stage vide order dated 08.08.2024. Learned counsel for the petitioner as well as for the respondent have placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Amardeep Singh vs. Harveen Kaur* reported as **(2017)8 SCC 746** and also 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**, in support of their arguments.

4. On the basis of abovesaid facts and circumstances, it has been jointly prayed that the present revision petition be allowed and the application filed by the respondent be allowed and the Family Court be directed to record their statements in second motion as expeditiously as possible.

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

6. A perusal of the joint petition dated 23.07.2024 which has been annexed as Annexure P-1 along with the present revision petition would show that marriage between the petitioner and respondent was solemnized on 12.05.2014 and it had been specifically averred in para 5 of the joint petition that they have been living separately for the last more than 1 ½ years due to indifferent attitude and temperaments and could not adjust with each



other and have not resumed cohabitation and that there is no possibility or probability of their living together as their marriage has completely broken down and there is no possibility of their reconciliation. Further in para 6 of the joint petition, it had also been further averred that with the intervention of the relatives and respectable people of the locality, the parties have arrived at a compromise and have decided to dissolve the marriage by mutual consent as the same would serve no purpose. In para 8, it had further been pleaded that the husband would pay a sum of Rs.10,00,000/- to the respondent-wife as past, present and future alimony in lump sum which would be paid before the Court at the time of making of final statement by the parties. Further in para 12 of the joint petition, it had been specifically stated that the petitioner and respondent could not reconcile their differences and that no purpose would be served in continuing the marital relationship as there is no possibility of revival of the marital relationship.

7. It has been highlighted before this Court that the petitioner and respondent have no child. The averments made in the joint petition are duly supported by the statements made by the petitioner and respondent on 23.07.2024 before the Principal Judge, Family Court, Bathinda which have been annexed as Annexures P-2 and P-3 along with the present revision petition. In the said statements, it had been specifically stated by both the petitioner and respondent that no child was born out of the wedlock and they were unable to live together on account of temperamental differences and that they have been residing separately for the last more than one and a half year and they never cohabited during the said period and in spite of best efforts, they have not been able to adjust with each other. It had further been



stated by both that with the intervention of relatives and respectable people of the locality, a compromise had been effected and an amount of Rs.10,00,000/- was to be paid as past, present, future maintenance and permanent alimony by the husband to the wife. The parties had further undertaken in the statements not to initiate any civil or criminal litigation against each other. In the application filed by the respondent-wife for dispensing off/waiving off the period for six months, it had been stated that there was absolutely no possibility of reconciliation as the respondent-wife wanted to join the sacred cult of 'Brahm-Kumari's' and her induction process to the community of 'Brahm-Kumari's' would be completed only after her divorce is granted and thus, the waiting period of six months may be waived off as otherwise the respondent would not be able to concentrate in her obeisance and devotion.

8. Section 13B of the 1955 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 joint statement of the parties that they have been residing separately for a period of more than 1 ½ years prior to the filing of the joint petition dated 23.07.2024.

9. With respect to the second condition mentioned in Section 13-B of the 1955 Act that the second motion is to be made not earlier than six months after the date of the presentation of the first petition and not later than eighteen months after the said date. It would be relevant to note that the



Hon'ble Supreme Court in the case of **Amardeep Singh** (Supra), had observed that where the Court was dealing with a matter under Section 13-B of the 1955 Act and is satisfied that a case is made out to waive off the statutory period under Section 13B(2) of 1955 Act, then it can do so after considering the aspects which were detailed in the said judgment. Para 18 of the judgment passed in the case of **Amardeep Singh** (Supra), is reproduced hereinbelow:-

“18. 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 13B\(2\)](#), it can do so after considering the following :

- i) the statutory period of six months specified in [Section 13B\(2\)](#), 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.”*

10. In the present case, it is not in dispute that the statutory period of six months as well as period of one year of separation of parties is already over before the first motion itself. It is also apparent from the record and the statements and the arguments raised before this Court as also before the Family Court, that all the disputes and differences between the parties have



been settled. An amount of permanent alimony has been settled which is stated to be Rs.10,00,000/-. Since, the parties have no child thus, the issue with respect to custody of child does not arise in the present case. This Court has been informed that there is no other case pending between the parties and the parties have undertaken not to institute any other case, thus, condition No.3 also stands satisfied in the present case. With respect to condition No.2, it would be relevant to note that it is the specific case of the parties both in the joint petition as well as in their statements before the Court and also before this Court that the marriage has completely broken down and there is no possibility of reconciliation and it was only with the intervention of the relatives that the matter has been finally settled after realising that the marriage cannot possibly continue. It has further been stated that the parties have never cohabited since the time they have been living separately. It has been highlighted by the counsel for the wife that she has decided to join the sacred cult of 'Brahma-Kumari's' and thus, there is no possibility of any reconciliation. In the present case, it would be relevant to note that marriage between the parties had taken place on 12.05.2014 and thus, it cannot be said that the decision to take divorce has been taken impulsively and apparently, the said decision has been taken after considering all the aspects and as pleaded, after the intervention of the respectables and the relatives. Even before this Court, both the counsel have stated that all efforts of mediation and conciliation have been done and yet there is no possibility of the petitioner and respondent residing together. It has also been highlighted that even after 23.07.2024, the date on which the first motion was filed jointly, a period of more than three months has lapsed



and the parties have not cohabited and thus prolonging the case would only prolong the agony of the parties, who have mutually decided to move on in life.

11. 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 (Supra)** 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 1955 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 1955 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. 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.*

xxx xxx xxx

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 nonstarter. 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.”

12. In the abovesaid case, where the parties were married for only 15 months, the Hon’ble Supreme Court found that no useful purpose would be served by making the parties wait and same would only prolong their agony. In the present case, as has been stated above, the parties have been married since 2014 and thus, both the counsel have rightly highlighted that the decision to take divorce has been taken after taking into consideration all the relevant factors and after all efforts of reconciliation have failed.

13. Before parting, it would be relevant to note that the earlier application filed by the parties was dismissed on 08.08.2024 but in the said order, it was specifically noticed that the same was dismissed “at that stage”. The subsequent event of respondent’s decision to join ‘Brahm-Kumari’s’ is a substantial event to be considered while adjudicating the subsequent

application. Moreover, as has been highlighted hereinabove, in addition to the period of 1 year 6 months for which the petitioner and respondent have resided separately before filing the joint petition dated 23.07.2024, a further period of more than three months has elapsed and it is the case of the petitioner and respondent that there is no possibility of reconciliation. With respect to observations made by the Principal Judge, Family Court on the aspect of the amount of Rs.10,00,000/- and whether the same is to be received by the respondent or not, both the counsel before this Court have made a statement that an amount of Rs.10,00,000/- would be paid by the petitioner-husband to the respondent-wife at the time of making of second statement.

14. Keeping in view the abovesaid facts and circumstances, the present revision petition is allowed and order dated 07.09.2024 is set aside and the parties are permitted to move an application for preponing the case which is now listed for 29.01.2025 before the Family Court and on their doing so, the Family Court would prepone the main case and would give a 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 1955 Act, in accordance with law.

24.10.2024

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No