

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7800-2023 (O&M)
Date of Decision: April 02, 2024

Resham
...Petitioner

Versus

Sarvesh Gumber
...Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Kulwinder Singh, Advocate
for the petitioner.

Ms.Himani Kapila, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 01.12.2023 (Annexure P-1) passed by learned Family Court, whereby, an application filed for seeking waiving off statutory period of six months, provided under Section 13-B(2) of the Hindu Marriage Act, was dismissed.

In pursuance of notice issued, respondent has made appearance through counsel.

Learned counsel for the parties heard.

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

That, petition under Section 13-B of the Hindu Marriage Act for seeking divorce by mutual consent was filed by the petitioner and the respondent. Along with the same, an application was also filed for seeking

waiver of six months' waiting period. On the day of filing of the application, statements of first motion of both the petitioner and respondent were recorded, but however, the application for seeking waiver of statutory period of six months, was dismissed.

From the facts, as culled out from the paperbook are that the marriage between the parties took place on 15.09.2018. No child was born from the said wedlock. However, due to incompatibility, both the petitioner as well as respondent are living separate since 05.03.2021. Thereafter, a compromise was effected between the parties with the intervention of the Panchayat members and both of them had filed a petition under Section 13-B of the Hindu Marriage Act for seeking divorce by mutual consent. The said petition was filed on 01.12.2023. On that very day, the statements of first motion were recorded and the application was filed for seeking waiving off six months' waiting period. However, the aforesaid application was dismissed, vide impugned order.

In the application, it has been specifically mentioned by both the parties that they are residing separate since 05.03.2021 i.e. more than two years and they are of young age and now they do not want to prolong their agony and want to settle in healthy environment in future. To so substantiate their submissions, reliance was placed on *Amardeep Singh vs. Harveen Kuar, 2017 (8) SCC 746*.

In *Amardeep Singh's case (supra)*, it was held by the Hon'ble Supreme Court 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. In the same, it was observed by the Court that where the court dealing with a matter, is satisfied that a case is made out to waive off 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 XXXIIA 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.*

At this juncture, it is pertinent to make mention to the decision rendered 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 the factors mentioned in ***Amardeep Singh's case (supra)***, are illustrative and not exhaustive. Furthermore, in the same, it was also 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, adverting to the case in hand, it is pertinent to mention that the marriage had taken place on 15.09.2018 and the parties are residing separate since 05.03.2021. The petition under Section 13B was filed on 01.12.2023, as already observed aforesaid. Even, the statements of first motion were recorded on 01.12.2023.

It is evident that period of one and half year of separation, as required, is already fulfilled. Even, in their respective statements, the parties have categorically stated that there were sharp and irreconcilable differences between their taste, habits and temperaments and they could not pull along well with each other. Sufficient time has also been consumed in making an attempt to resume cohabitation. They both have also stated that all efforts

for their rehabilitation have proved futile. The parties are still of young age and there are chances of their re-settlement.

Keeping in view the same, the waiting period of six months, shall prolong their agony. In the given circumstances, the present revision petition, as such, is hereby accepted and the application for seeking waiving off the statutory period of six months is hereby allowed.

In the light of the same, the parties are directed to make appearance before the Court concerned/Successor Court on 08.04.2024. On that very day, the Court concerned shall prepone the case and the record the statements of second motion of both the parties, within a period of seven days, at the maximum and decide the petition forthwith.

April 02, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No