



CR-7222-2024

-1-

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

(125)

CR-7222-2024

Date of Decision: - 12.12.2024

Rajwant Singh

....Petitioner

Versus

Kiranjit Kaur

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Dinesh Nagar, Advocate,
for the petitioner.

Ms. Vibha, Advocate
for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 21.11.2024 (Annexure P-7) (wrongly mentioned as Annexure P-5 in the petition) passed by the Additional District Judge, SBS Nagar, on an application bearing No.IA/1/2024 in HMA/620/2024 titled as 'Rajwant Singh Vs. Kiranjit Kaur', whereby the application seeking waiving off six months cooling period as stipulated under Section 13-B of the Hindu Marriage Act, 1955 has been dismissed.

2. Learned counsel for the petitioner-husband as well as the respondent-wife have jointly submitted before this Court that they had filed a joint petition under Section 13-B of the Hindu Marriage Act for



CR-7222-2024

-2-

dissolution of marriage between the petitioner and the respondent by way of a decree of divorce by mutual consent and in the said petition, it had been averred that the petitioner and the respondent got married on 18.08.2008 according to Sikh Religious rites and rituals and had cohabited together as husband and wife at village Pharala, Tehsil Nawanshahr, District SBS Nagar and had performed their matrimonial obligations towards each other and from the wedlock, two sons were born on 30.03.2013 and 08.04.2015 and both the children are living under the care and protection of the petitioner. It was also specifically averred in the said petition that the marriage was registered before the Registrar of Marriage at Nawanshahr and a photocopy of the registration certification dated 26.08.2008 was also attached with the petition and that after the marriage, both the parties had migrated to the USA and although, initially there was a cordial relation between them but thereafter on account of temperamental differences, disputes arose between the petitioner and the respondent and their relation became very sour and they could not live under the same roof and have been living separately since June, 2020.

3. It is further pointed out that in para 5 of the said petition, it was specifically stated that they had come to India for the purpose of settlement and the elders, relatives and friends had made all efforts for reconciliation between the parties but in spite of their best efforts, the reconciliation failed and the parties amicably decided to give divorce to each other and that all the issues between the parties were settled and were reduced into writing by way of a written divorce deed dated

**CR-7222-2024****-3-**

04.11.2024, which has been annexed as Annexure P-1 alongwith the present revision petition and which reiterates the averments that have been made in the joint petition.

4. It is further submitted that the two minor sons of the petitioner and the respondent would remain under the care, custody and protection of the the petitioner/husband, who would be responsible for the upbringing of both the children and would provide all facilities for their well being, education etc. and even the respondent/mother would have a right to meet the children as and when she likes by giving prior intimation of two to three days and all aspects with respect to permanent alimony, future custody of the children have been fully resolved between the parties.

5. It is further pointed out that the said petition was listed on 12.11.2024 and on the said date, as is apparent from the zimni order dated 12.11.2024, efforts were made by the Court to make the parties live together but it was observed by the Court that the parties were adamant for a divorce and accordingly, the first statement of the petitioner as well as the respondent was recorded on 12.11.2024 and the said statements have been annexed alongwith the petition as Annexures P-4 and P-5 and in the said statements it was specially reiterated that with the intervention of respectable persons, a compromise had been effected between the parties and the main case was adjourned to 19.05.2025.

6. Application was filed for waiving off the cooling period of six months as stipulated under Section 13-B(2) of the Hindu Marriage



CR-7222-2024

-4-

Act, on the averment that the petitioner and the respondent had been living separately for more than four years and all hopes of their reconciliation had completely failed and since the marriage had irretrievably broken down, thus, the parties had decided to get a divorce. It was stated that the petitioner and the respondent are residing in the USA and are doing their jobs there and even the children are studying in a school in the USA and thus, the delay in recording the second statement would cause irreparable loss to them and would also adversely affect the studies of the children. It was further stated that the same would also cause mental harassment and would also prolong the agony of the parties. The said application was however dismissed by virtue of the impugned order dated 21.11.2024. In the said order dated 21.11.2024, it had been observed that since it was the admitted case of the parties that they had been living separately for more than four years before the presentation of the case, thus, the condition as required under Section 13-B(1) of the Hindu Marriage Act was fulfilled however, since proper reconciliation efforts had not been made, thus, the application was rejected and the case was ordered to come up on 19.05.2025.

7. Learned counsel for the petitioner and the respondent have jointly submitted that the application filed by the petitioner be allowed and the Court be directed to record the statements in the 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



CR-7222-2024

-5-

11.12.2021.

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

9. Section 13-B 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 divorce deed and the joint statement of the parties that they have been residing separately since June, 2020 and the joint petition was drafted on 11.11.2024 i.e. after a period of more than four years. The second condition which has been mentioned in Section 13B of the Hindu Marriage Act 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 ***Amandeep 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 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.”*

10. The facts of the present case are on a higher footing than the case before the Hon'ble Supreme Court in the case of **Amit Kumar (supra)**, inasmuch as, the petitioner and the respondent have been married since 18.08.2008 and are stated to be residing separately since June, 2020 and thus, it is apparent that the decision to part ways is not an impulsive decision but has been taken after much consideration and after a period of having lived separately for a period of more than four years. It is further the common case of the parties that all the claims including the claim



CR-7222-2024

-8-

regarding maintenance, permanent alimony and also custody of the two minor children had been settled and the said settlement is in the best interest of petitioner, the respondent as well as the minor children. A perusal of the divorce deed dated 04.11.2024 as well as the joint petition dated 11.11.2024 would clearly show that it is the specific case of the parties that all efforts had been made by the elders, relatives and friends for the reconciliation between the parties but since the marriage had failed irretrievably, thus, the petitioner and the respondent have decided to part ways. Even the perusal of the zimni order dated 12.11.2024 would show that even the Court had made an effort to make the parties live together but both the parties had stated that they wanted a divorce. Since the parties are residing separately since June, 2020 and the marriage has irretrievably broken down, any further delay in the case would only prolong the agony of the parties and thus, the present case would fall under the parameters of the law laid down by the Hon'ble Supreme Court in *Amit Kumar (supra)*.

11. Importantly, it would also be relevant to note that both the parties are residing in the USA and are doing their jobs in the USA and even the minor children are studying in a school in the USA and thus, any delay in recording the second statement would result in causing great prejudice to the parties concerned and thus, the joint application filed by the petitioner and the respondent deserves to be allowed.

12. Keeping in view the above said facts and circumstances, the present revision petition is allowed and the impugned order dated

**CR-7222-2024****-9-**

21.11.2024 is set aside and the parties are permitted to move an application for preponing the case which is now listed for 19.05.2025 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 moving of the said application for recording the statements of both the parties with respect to the second motion and in case the parties record the said statements in consonance with their pleadings and their earlier statements, then, the Family Court would pass the necessary final order in the petition under Section 13-B of the Hindu Marriage Act, in accordance with law.

December 12, 2024
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes
Yes