



C.R.P.(MD)No.1590 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 22.05.2025

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.1590 of 2025

Madhan Mohan Roy

... Petitioner

vs.

Sangeetha

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to direct the learned Subordinate Judge, Tiruchendur, to take the unnumbered I.A.SR.No.3439 of 2025 in H.M.O.P.No.12 of 2025 on file and number the same and decide the application within a time frame, as may be fixed by this Court.

For Petitioner :Mr.D.S.Haroon Rasheed

ORDER

The present Civil Revision Petition has been filed seeking a direction to the learned Subordinate Judge, Tiruchendur, to take the unnumbered I.A.SR.No.3439 of 2025 in H.M.O.P.No.12 of 2025 on file and number the same and decide the application.



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2.The petitioner and the respondent herein are husband and wife.

Their marriage was solemnized on 10.09.2013. Thereafter, due to the misunderstanding arose between them, they decided to live separately and the petitioner herein had filed a petition in H.M.O.P.No.180 of 2021 before the Sub Court, Tiruchendur, seeking divorce. During the pendency of the divorce petition, both the petitioner and the respondent have settled their disputes amicably and the petitioner herein had settled a sum of Rs.12,00,000/- as one time settlement to the respondent herein and had withdrawn the petition for divorce. Subsequently, both of them have jointly filed a petition in H.M.O.P.No.12 of 2025 seeking divorce on mutual consent. Thereafter, the petitioner and the respondent herein have filed an interlocutory application to waive off the cooling period of six months on the ground that the petitioner had obtained employment in abroad. However, the learned Subordinate Judge, Tiruchendur, has returned the papers on the ground of maintainability. Challenging the same, the petitioner has filed the present Civil Revision Petition seeking a direction to the learned Subordinate Judge, Tiruchendur to number the interlocutory application and proceed in accordance with law.



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3.The learned Counsel appearing for the petitioner by referring the decisions of the Hon'ble Supreme Court in *Soni Kumar vs Deepak* [C.A.No.7164 of 2015], *Amardeep Singh Vs Harveen Kaur* reported in *2017 (4) RCR (Civil) 608*, and *Amit Kumar Vs Suman Beniwal* [C.A.No.7650 of 2021] submitted that statutory cooling off period can be waived in cases of mutual consent divorce. According to the learned Counsel, the petitioner and the respondent have been living separately and the petitioner had paid a sum of Rs.12,00,000/- to the respondent as one time settlement and hence, there is no possibility between them to revise, mediate or cohabit in future. Hence, the statutory cooling off period has to be waived off.

4.Heard the learned Counsel for the petitioner and perused the materials placed on record.

5.Admittedly, the marriage between the petitioner and the respondent was solemnized on 10.09.2013. They claim that due to some



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misunderstanding, they have been living separately for more than five years. Now both of them have jointly filed petition in H.M.O.P.No.12 of 2025 seeking divorce on mutual consent, before the Sub Court, Tiruchendur, for dissolution of marriage by mutual consent. Subsequently, both the petitioner and the respondent have filed an interlocutory application to waive the cooling off period of six months. However, the learned Subordinate Judge has returned the said application on the ground of maintainability of application. The grievance of the petitioner is that though they are living separately for more than five years, the trial Court without considering the same, refused to the number the interlocutory application.

6.As per the law laid down by the Hon'ble Supreme Court, all the efforts for mediation/conciliation including efforts under Order 32 A Rule 3 of Civil Procedure Code, [Section 23\(2\)](#) of the Hindu Marriage Act and [Section 9](#) of the Family Courts Act to reunite the parties have to be taken and if it is failed and if there is no likelihood of success in that direction, the Court may proceed further by cooling off the waiving period under Order 32A Rule 3 of Civil Procedure Code.



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7. Order 32A Rule 3 of Civil Procedure Code is extracted as under:-

“3. Duty of Court to make efforts for settlement.

(1) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement, in respect of the subject-matter of the suit.

(2) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-rule (2) shall be in addition to, and not in derogation of, any other power of the Court to adjourn the proceedings.”

8. [Section 23\(2\)](#) of the Hindu Marriage Act is Extracted as under:-

“(2) Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of [section 13](#).

(3) For the purpose of aiding the Court in bringing about such reconciliation, the Court may, if the parties so desire or if the Court thinks it just and proper so to do adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the Court, if the parties fail



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to name any person, with directions to report to the Court, as to whether reconciliation can be and has been, effected and the Court shall in disposing of the proceedings have due regard to the report.”

9. **Section 9** of the Family Courts Act is extracted as under :-

“9. Duty of Family Court to make efforts for settlement.-

(1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit. -

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it think fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of any other power of the Family Court to adjourn the proceedings.”

10. In **Amardeep Singh**'s case (referred supra), the Hon'ble Supreme

Court held as follows:-

“16. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The amendment was inspired by the thought



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that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling off the period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.

... ..

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 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.

... ..

21. Since we are of the view 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."



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11.As it has been held by the Hon'ble Supreme Court that the cooling off period mentioned in [Section 13B\(2\)](#) of the Act is not mandatory but directory, though it was once compulsory for mutual consent divorce and when there is no possibility of parties resuming cohabitation, this Court is of the view that the cooling off period in this case is to be waived.

12.In view of the above, this Civil Revision Petition is allowed and the learned Subordinate Judge, Tiruchendur, is directed to take the unnumbered I.A.SR.No.3439 of 2025 in H.M.O.P.No.12 of 2025 on file and number the same and decide the application within a period of two weeks from the date of receipt of a copy of this order. No costs.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No

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To
The Subordinate Judge, Tiruchendur.



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S.SRIMATHY, J.

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