

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2527-2021 (O&M)

Date of Decision: 17.11.2021

Amit Kumar

....Petitioner

VS

Suman Beniwal

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Arav Gupta, Advocate
for the petitioner

Mr. Amit Chaudhary, Advocate
for the respondent

SUDHIR MITTAL, J.

Marriage of the parties was solemnized on 10.09.2020. They have been separated since 13.09.2020. The marriage has not been consummated. Citing irreconcilable differences, a petition under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') has been filed for dissolution of the marriage. It has been averred in the petition that neither party has any claim against the other and no maintenance or permanent alimony has been demanded. Many efforts were made at mediation but the same could not yield any fruitful results.

2. First motion was recorded on 30.09.2021, which is in accordance with the pleadings in the petition. On 12.10.2021, an application was filed for waiving the six months statutory period prescribed by Section 13B(2) of the Act. This application has been dismissed by the trial Court vide impugned order of even date. He has relied upon the judgment of the Supreme Court in *Amardeep Singh vs. Harveen Kaur, 2017(4) RCR(Civil) 608* to reject the application as one of the four conditions laid down in the said judgment was not fulfilled i.e. statutory period of

six months specified in Section 13B(2) in addition to the statutory period of one year specified in Section 13B(1) was not over before the first motion.

3. Learned counsel for the parties have submitted that the period of six months stipulated by Section 13B(2) is only directory in nature. Thus, the same can be waived. The present case is one where exceptional circumstances exist for exercise of the power of waiver of six months period. Both parties are mature being 31 years and 30 years of age respectively, are well educated and have a good standing in Society. The husband is an IPS Officer whereas the wife is IFS Officer. Adequate thought has gone into the consequences of a mutual divorce. All conditions laid down in *Amardeep Singh (supra)* stand fulfilled and, therefore, the trial Court was in error in rejecting the application. It has also been argued that six months period stipulated by Section 13B(2) of the Act can be waived even if one and a half years have not elapsed before date of first motion as has been done by this Court in *Jobanpreet Kaur vs. Jaspinder Singh, 2020(3) RCR (Civil) 582* and *Re: Nav Raj Bhatta and others, 2019(2) RCR(Civil) 712*. Reliance has also been placed upon Division Bench judgment of Allahabad High Court in *Priyanka Chauhan vs. Principal Judge Family Court and others, AIR 2021 All 164*.

4. The judgment in *Amardeep Singh (supra)* is unambiguous. It lays down that the object of Section 13-B of the Act is to enable parties to dissolve a marriage by consent if it has broken down irretrievably. This would enable them to explore other options and to move on in life. A period of six months has been provided in Section 13B(2) of the Act to safeguard against a hurried decision. However, if a Court comes to the conclusion that there is no chance of a reunion, it should not be powerless to waive the statutory period of six months so that the parties may not be subjected to further agony. Thus, it has been held that six months statutory period prescribed is directory in nature. However, the power has been made subject to certain conditions which are reproduced below:-

- 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.*

5. A perusal of the aforementioned conditions shows that all of them are fulfilled except the condition of a period of 1 ½ years having elapsed before the first motion. Thus, the Family Court had no option but to dismiss the application filed for waiving the period of six months. In this view of the matter no error has been committed by it warranting any interference by this Court. The judgments in ***Jobanpreet Kaur (supra)***; ***Nav Raj Bhatta (supra)*** and ***Priyanka Chauhan (supra)*** can not be relied upon even though in the said cases a period of 1 ½ years had not elapsed before the first motion for the reason that none of them have considered the issue of waiver being subject to period of 1 ½ years having elapsed before first motion.

6. In view of the above, the revision petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

17.11.2021

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Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No