

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

:SINGLE BENCH:
{HON'BLE SHRI JUSTICE ANAND PATHAK}

Miscellaneous Petition NO.2418/2018

Smt. Baljeet Kaur
Vs.
Harjeet Singh

Shri Sarvesh Sharma, learned counsel for the petitioner.
Shri I.S.Asthana, learned counsel for the respondent.

Whether approved for reporting : Yes

Law laid down:

- 1- Mandatory period as prescribed in Section 13-B(2) of the Hindu Marriage Act (hereinafter referred to 'the Act, 1955) is discretionary in nature and Court can consider if there is no possibility of the parties resuming cohabitation and there are chances of alternative rehabilitation.
- 2- The Court can view the medium of video conferencing for seeking divorce under Section 13-B of the Act, 1955 and can also permit genuine representation of the parties through close relations such as parents or siblings in the interest of justice.

ORDER
(Passed on 10-05-2018)

With consent heard finally.

The present petition is preferred by the petitioner who, alongwith her spouse respondent, Harjeet Singh filed an application under Section 13-B of Hindu Marriage Act (hereinafter referred as to 'the Act') before the First Additional District Sessions Judge,

Dabra, District Gwalior as Family Court vide case No.33/2018 on the basis of judgment passed by the Apex Court in the case of **Amardeep Singh Vs. Harveer Kaur** reported in **2017 (8) SCC 746** thereby submitting that the period of six months as stipulated in Section 13-B of the Act be waived of if there is no possibilities of settlement and parties cannot be forced to suffer mental agony by way of waiting for further six months. It is the grievance of the petitioner and respondent that the court below did not consider the said aspect and placed the matter on 26.09.2018 vide order dated 24.03.2018. The same is contrary to the mandate of the Apex Court in the case of **Amardeep Singh (Supra)**.

Learned counsel for the respondent is in unison at least in respect of provision stipulated under Section 13-B of the Act that waiting period between two motions be waived of as each of them want to get rid of relationship at the earliest.

Heard the learned counsel for the parties.

The Apex Court in the case of **Amardeep Singh (Supra)** has dealt with the controversy and earlier decisions of the Apex Court and while reconciling the conflicting views, have given the mandate wherein the Apex Court has directed that concerned Court to exercise their discretion in the facts and circumstances of the each case, where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation. The Court has considered the following questions:

- i) How long parties have been married?
- ii) How long litigation is pending?
- iii) How long they have been staying apart?
- iv) Are there any other proceedings between the parties?
- v) have the parties attended mediation/conciliation?
- vi) Have the parties arrived at genuine settlement which takes care of alimony, custody of child or any other pending issues between the parties?

According to mandate of the Apex Court, the waiver

application can be filed one week after the first motion giving reasons for the prayer for waiver and if the condition referred above are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court.

Thus, it is clear that the Court must be satisfied about the separate living of the parties for more than the statutory period and all efforts at mediation and reconciliation have been tried and have failed and there is no chance of reconciliation and it is to be seen that further waiting period will only prolong their agony. If these conditions are satisfied then the Court has discretion to waive the waiting period of six months for the second motion.

The Court can also use the medium of video conferencing and can also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reasons as may satisfy the Court, to advance the interest of justice. Thus, trial Court has wide discretion to take a call in view of said annunciation of law.

With the time, mindsets also need updation and same is true with the perspective of an Institution.

Therefore, if both the parties intend to sever nuptial bonds on their own volition because of non-compatibility and to move on in their respective lives, then it is the duty of the Court to look into such aspects and thereafter take a decision accordingly.

Here in the present case it appears that the said aspect has not been considered by the trial Court, therefore, impugned order dated 24.03.2018 is hereby modified.

Considering the fact situation as well as the mandate of the Apex Court, the matter is remanded back to the trial Court for taking fresh call over the facts situation of the case and thereafter pass the order in respect of the prayer made by the parties jointly for waiving of the period of six months for getting divorce. Impugned order dated 24.03.2018 so far as it relates to placing the case on 26.09.2018 is concerned, the same is modified and parties

are directed to appear before the court below on dated **31.05.2018** wherein the court below would consider the application preferred jointly by the parties afresh in terms of the mandate of the Apex Court in the case of **Amardeep Singh (Supra)**.

The petition stands disposed of with the aforesaid directions.

(Anand Pathak)
Judge

AK/-