

THE HIGH COURT OF MADHYA PRADESH
CR-495-2019
(Kumar Avinava Dubey Vs. Smt. Varsha Mishra)

Gwalior, Dated : 30.07.2019

Shri I.P.S. Kohli, counsel with Shri A.P.S. Sisodiya, counsel for the applicant.

Shri Avnish Singh, counsel for the respondent.

This revision under Section 115 of the CPC has been filed against the order dated 18.07.2019 passed by Additional Principal Judge, Family Court, Gwalior in HMA Case No. 152-A/2019 by which the application filed by the applicant under Section 151 of CPC for waiving of the cooling period of six months has been rejected.

It is submitted by the counsel for the applicant that a joint application under Section 13-B of the Hindu Marriage Act has been filed by the applicant as well as respondent for grant of divorce by mutual consent. The statements of the witnesses were recorded on 25.06.2019 and thereafter the case was fixed for further proceedings on 04.01.2020 and thereafter the applicant filed an application under Section 151 of CPC for waiving of the cooling period.

It is the contention of the applicants in the application under Section 151 of CPC that the case was fixed for the first time for reconciliation proceedings on 17.05.2017 but the same failed and, accordingly, case was taken up by the Family Court on 25.06.2019 and the statements of the witnesses were recorded and now the case has been fixed for further proceedings on 04.01.2020. For waiving of

the cooling period, it was mentioned in the application that since the parties are residing separately from 26.06.2017 and the said decision was taken voluntarily and the parties have also decided to stay separately and now there is no possibility of reconciliation or restitution of conjugal rights. It is also mentioned that the parties are well educated and they are aware of the pros and cons of the proceedings and the parties are residing separately for the last two years and there is no possibility of any reconciliation in the future and the parties are aggrieved by grant of six months' time by way of cooling period. It was further mentioned in the application that the parties want to reside separately in a fearless and tension free atmosphere and they want to remarry so that they can serve their parents. Looking to their age as well as the social status, remarriage of the parties is possible and the cooling period of six months would further delay in justice and keeping the application pending unnecessarily before the Court would be painful for the parties. It is also mentioned that now the case is fixed for 04.01.2020 and this period of six months would result in mental pain and suffering to the parties and the parties have already undergone the pain and suffering. It was further mentioned that on 04.01.2020 also, there is no possibility of reconciliation and the parties have already resolved their disputes between them and this cooling period would merely enhance the mental pain and suffering to the parties and it would result in keeping the case unnecessarily pending before the Family Court.

The Trial Court by order dated 18.07.2019 has rejected the application after considering the judgment passed by the Supreme Court in the case of **Amardeep Singh Vs Harveen Kaur** reported in **(2017) 8 SCC 746**.

Challenging the order passed by the Court below, it is submitted by the counsel for the applicant that the parties had stayed together for a period of just 8-10 days after their marriage and from thereafter they are continuously residing separately and there is no possibility of reconciliation between them and the applicant has to go back to USA for doing his research work whereas the respondent also wants to go to Italy, therefore, if the divorce proceedings are not disposed of prior to their departure then they would suffer irreparable loss. It is further submitted that after the marriage, the marriage has not been consummated so far.

Heard the learned counsel for the petitioner.

During the course of arguments, an impression was given by the applicant that in spite of the best efforts, the parties could not reside together and they got separated immediately after 10-12 days and because of that, the marriage could not be consummated. In order to verify the statement made by the counsel for the applicant, when this Court tried to go through the copy of the application filed under Section 13-B of the Hindu Marriage Act, then it was found that it has not been filed along with the present civil revision, therefore, the counsel for the applicant was requested to supply the copy of application filed under Section 13-B of the Hindu Marriage Act.

Accordingly, the copy of the application filed under Section 13-B of the Hindu Marriage Act has been supplied. Paragraph 2 of the application reads as under:-

“2. यह कि, उक्त विवाह के उपरांत प्रार्थी क्रमांक-1 कुमार अविनवा दुबे अपनी पी.एच.डी. की शिक्षा प्राप्त करने विदेश गया था, जिससे प्रार्थीगण विवाह पश्चात से ही पृथक-पृथक निवासरत है। पृथक-पृथक निवासरत रहने के दौरान प्रार्थीगण के मध्य किसी भी प्रकार के दाम्पत्य संबंध स्थापित नहीं हुये हैं। प्रार्थीगण ने विवाह पश्चात यह महसूस किया कि, उनके दृष्टिकोण और जीवन शैली में गंभीर अंतर है।”

Thus, from the application under Section 13-B of the Hindu Marriage Act, it is clear that the parties got married on 16.06.2017 and immediately thereafter the applicant left for USA for doing Ph.D. Although the date of going Abroad is not mentioned in the application, but at the request of the Court, it is pointed out by the applicant that the applicant left for USA on 26.06.2017 and came back only in the month of April, 2019. Thus, initial impression which was given by the applicant that the parties had resided separately because of differences, was not in accordance with the factual matrix of the case. In fact it was the applicant who himself left the respondent in India and went to Abroad and came back only in the month of April, 2019 and immediately thereafter the application under Section 13-B of the Hindu Marriage Act was filed on 16.05.2019. Thus, it cannot be said that the parties had resided separately because they could not resolve their disputes.

The Supreme Court in the case of **Amardeep Singh (Supra)** has held as under:-

“14. Learned amicus submitted that waiting period enshrined under Section 13-B(2) of the Act is directory and can be waived by the court where proceedings are pending, in exceptional situations. This view is supported by judgments of the Andhra Pradesh High Court in *K. Omprakash vs. K. Nalini*, Karnataka High Court in *Roopa Reddy vs. Prabhakar Reddy*, Delhi High Court in *Dhanjit Vadra vs. Smt. Beena Vadra* and Madhya Pradesh High Court in *Dineshkumar Shukla vs. Neeta*. Contrary view has been taken by Kerala High Court in *M. Krishna Preetha vs. Jayan Moorkkanatt*. It was submitted that Section 13-B(1) relates to jurisdiction of the Court and the petition is maintainable only if the parties are living separately for a period of one year or more and if they have not been able to live together and have agreed that the marriage be dissolved. Section 13-B(2) is procedural. **He submitted that the discretion to waive the period is a guided discretion by consideration of interest of justice where there is no chance of reconciliation and parties were already separated for a longer period or contesting proceedings for a period longer than the period mentioned in Section 13-B(2). Thus, the court should consider the 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?”

(Underline Supplied)

From plain reading of the judgment passed by the Supreme Court in the case of **Amardeep Singh (supra)**, it is clear that the provision of Section 13-B(2) of the Hindu Marriage Act is not mandatory and it is directory and the Family Court can waive the cooling period subject to the satisfaction of the following eventualities:-

(i) Where there is no chance of reconciliation and the parties were already separated for a longer period.

(ii) Contesting proceedings is for a period longer than the period mentioned in Section 13-B(2) of the Hindu Marriage Act.

So far as the first condition is concerned, the word “separated” would mean that where the parties are residing separately in spite of all efforts to resolve their mutual disputes. When the applicant had left for USA just for the purposes of doing Ph.D., then it cannot be said that leaving the respondent for obtaining higher education was because of some mutual misunderstanding or dispute. Therefore, this Court is of the considered opinion that under the facts and circumstances of the case, it cannot be said that there was no chances of reconciliation and parties were already separated for a longer period.

So far as the second condition is concerned, undisputedly the application under Section 13-B of the Hindu Marriage Act was filed on 16.05.2019 only and thus, it is clear that the parties are not contesting the proceedings for a period longer than the period mentioned in Section 13-B(2) of the Hindu Marriage Act, therefore, this Court is of the considered opinion that none of the conditions mentioned in paragraph 13 of the judgment passed by the Supreme Court in the case of **Amardeep Singh (supra)** is satisfied.

When the application under Section 13-B of the Hindu Marriage Act is filed, the Legislature has deliberately provided for a

cooling period of six months under Section 13-B(2) of the Hindu Marriage Act. The purpose of Section 13-B(2) of the Hindu Marriage Act is to give an opportunity to the parties to give a second thought to their decision to get separated. Merely because the parties were residing separately in order to have higher education cannot be said to be separation because of any mutual understanding or dispute.

At this stage, it is submitted by the counsel for the applicant that even the respondent had gone to USA on some occasion to resolve their dispute but she could not succeed and they never stayed together in USA also.

The verbal submissions made by the counsel for the applicant cannot be accepted because this submission does not find place either in the application under Section 13-B or Section 13-B(2) of the Hindu Marriage Act nor in the present application under Section 482 of Cr.P.C.

It is further submitted by the counsel for the applicant that the respondent is also represented by her counsel and she is also willing to waive the cooling period.

The intention behind this submission appears to be that where both the parties have agreed for waiving of the cooling period, then the Court is under obligation to waive the cooling period. The submission made by the counsel for the applicant cannot be accepted. As already pointed out by this Court, the intention of the Legislature is to give a second opportunity to the contesting litigants to reconsider their decision of getting separated for the simple reason

that the Legislature was of the view that in a heat of passion, a party may take a decision and thereafter may regret for the decision, which was taken by him or her after the things travel beyond his or her control, therefore, at this moment, if both the parties are ready for waiver of the cooling period would not mean that the Court is under obligation to waive the cooling period. The word directory means that the Court has to decide the application after taking all the relevant aspect into considerations. The reasons as mentioned under Section 13-B(2) of the Hindu Marriage Act cannot be ignored merely because the parties are asking for immediate divorce and the discretion has to be exercised in a judicious manner.

Accordingly, this Court is of the considered opinion that the Trial Court did not commit any mistake in rejecting the application filed under Section 13-B(2) of the Hindu Marriage Act. Consequently, the order dated 18.07.2019 is hereby affirmed.

The revision fails and is hereby dismissed.

(G.S. Ahluwalia)
Judge

Abhi