



RAJASTHAN HIGH COURT
**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 3261/2024



----Petitioner

Versus

----Respondent

For Petitioner(s) : Mr. Sikander Ali Chopdar

For Respondent(s) :

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

11/03/2024

Reportable

1. The instant writ petition has been filed by the petitioner with the following prayer:

"It is, therefore, prayed that Your Lordships may graciously be pleased to accept and allow this Petition by calling the entire record of the case with further direction to the learned Judge, Family Court No. 1, Jaipur Metropolitan-First to dispose of the application under section 13 of Hindu Marriage Act, 1955 which was instituted as Case No.984/2022 of the petitioner finally as per mandatory provision of section 21-B(1) & (2) of the Hindu Marriage Act, 1955 within



a period of 6 months in the larger interest of justice.

Any other order or directions which this Hon'ble Court deem just and proper looking to the facts and circumstances of the case may also kindly be passed in favour of the petitioner."



2. By way of filing this petition, the petitioner is seeking directions against the Family Court No.1, Jaipur Metropolitan Ist to decide the divorce petition bearing No.984/2022 expeditiously as early as possible within a period of six months in terms of the provisions contained under Section 21B(1) and (2) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955').

3. Counsel for the petitioner submits that the petitioner filed a divorce petition under Section 13 of the Act of 1955 against the respondent on various grounds for dissolution of their marriage. Counsel submits that after completion of pleadings between the parties, now case is posted for settlement of issues. Counsel submits in terms of the mandate contained under Section 21B of the Act of 1955 appropriate directions be issued to the Family Judge to decide the divorce petition expeditiously as early as possible.

4. Section 21B of the Act of 1955 deals with special provisions relating to trial and disposal of the petition under the Act. For convenience, the mandate contained under Section 21-B of the Act of 1955 is reproduced as under:



"21B. Special provision relating to trial and disposal of petitions under the Act.

—(1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent."



5. Perusal of said Clause 2 of Section 21-B of the 1955 clearly indicates that every petition filed under this Act shall be tried expeditiously as early as possible and endeavour shall be made to conclude the trial within a period of six months from the date of service of notice of the petition on the respondent. Here in the instant case, the respondent has been served long back and reply has been filed and thereafter the case has been posted for settlement of issues.

6. This Court considering the fact that the Family Courts are now having many divorce petitions and matrimonial cases pending and as such in order to regulate the procedure, necessary steps are being taken from time



to time and further dates are also given as per pendency of the cases.

7. This fact is not in dispute that legislature can provide that cases of a particular category should be decided within a specific time. There are many statutes which incorporate such provisions. However, all such provisions are usually held to be discretionary.

8. Recently, the Constitutional Bench of the Hon'ble Apex Court in the case of **High Court Bar Association, Allahabad vs. State of U.P. and Ors (Criminal Appeal No.3589/2023)** decided on 29.02.2024 has held that normally the Constitutional Courts should not fix a time bound schedule for disposal of the cases pending in any Court. The pattern of pendency of cases of various categories in every Court, including High Courts, is different. The situation at grass-root level is better known to the Judges of the concerned Courts. Therefore, the issue of giving out of turn priority to certain cases should be best left to the concerned Courts. The orders fixing outer limit for the disposal of the cases should be passed only in exceptional circumstances to meet any extraordinary situation.

9. It has been further held that every litigant cannot easily afford to file proceedings in the Constitutional Courts. Those litigants who can afford to approach the Constitutional Court cannot be allowed to take undue advantage by getting an order directing out of turn disposal





of their cases while all other litigants patiently wait in queue for their turn to come. The Courts superior in the judicial hierarchy, cannot interfere with the day to day functioning of the other Courts by directing that only certain cases should be decided out of turn within a time frame. The discretion should be left to the concerned Court to decide the cases as per priority unless there are very extraordinary circumstances.

10. Keeping in mind the mandate under Section 21-B of the Act of 1955, the petition stands disposed of with directions to the Family Court to take necessary steps and make endeavour to conclude the proceedings of the divorce petition expeditiously as early as possible.

11. It is further directed that the Family Court would keep in mind that unnecessary adjournment should not be allowed to be taken by either of the parties during pendency of the divorce petition to delay the disposal of the matter and all efforts should be made to conclude the proceedings in an expeditious manner and the object of early disposal of petition as provided under Section 21-B of the Act of 1955 be kept in mind while dealing with the divorce petitions filed by the petitioner.

12. The stay application and all pending applications, if any, also stand disposed of.

13. Let a copy of this order be sent to all Family Courts through Registrar General with directions to comply with the provisions contained under Section 21-B of the Act



of 1955 while deciding all matrimonial matters arising out of the provisions of the Act of 1955.

(ANOOP KUMAR DHAND),J



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