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IN THE HIGH COURT OF DELHI AT NEW DELHI

VIPIN SANGHI; DINESH KUMAR SHARMA, JJ.

MARCH 4, 2022

Summary: Passing a decree of divorce by mutual consent, the High Court has waived off the six months cooling off period as stipulated under Hindu Marriage Act after observing that keeping the couple tied to a legal bond would only mean snatching away from them the opportunity to lead a fulfilling life. (Para 4)

ORDER

1. The present appeal has been preferred jointly by both wife and the husband, appellant no.1 and 2 respectively, to assail the order dated 27.01.2022.

2. By the impugned order, the learned Principal Judge, Family Court, North-East, Karkardooma Court had rejected the second motion petition moved by the parties jointly under Section 13B (2) on the ground that the statutory period of six months from the date when the first motion was moved, and period of 18 months from the date of separation, has not expired. The impugned order shows that the family court has not considered the provisions of Section 14 of the Hindu Marriage Act and has misunderstood the judgment of the Supreme Court in **Amit Kumar vs Suman Beniwal**, Civil Appeal 7650/2021 decided on 11.12.2021. In **Amit Kumar** (supra), the Supreme Court had duly considered **Amardeep Singh vs Harveen Kaur 2017 (8) SCC 746**. Reading of **Amit Kumar** (supra) shows that the Family Court has not correctly understood the decision in **Amardeep Singh** (supra).

3. In **Amit Kumar** (supra), the Supreme Court on identical facts, inter alia, has held as under:

“20. In **Amardeep Singh v. Harveen Kaur**, relied upon by the Family Court and the High Court, this Court held:

19. 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 13-B (2), it can do so after considering the following:

(i) The statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year Section 13-B(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 32-A 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 the child or any other pending issues between the parties;

(iv) The waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be at the discretion of the court concerned.

20. Since we are of the view that the period mentioned in Section 13-B(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.”

21. The factors mentioned in **Amardeep Singh v. Harveen Kaur** (supra) in Paragraph 19 are illustrative and not exhaustive. These are factors that the Court is obliged to take note of. If all the four conditions mentioned above are fulfilled, the Court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13B(2) of the Marriage Act.

22. The Family Court, as well as the High Court, have misconstrued the judgment of this Court in **Amardeep Singh v. Harveen Kaur** (supra) and proceeded on the basis that this Court had held that the conditions specified in paragraph 19 of the said judgment, quoted hereinabove, are mandatory and that the statutory waiting period of six months under Section 13B(2) can only be waived if all the aforementioned conditions are fulfilled, including, in particular, the condition of separation of at least one and half year before making the motion for decree of divorce.

23. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. A judgment is not to be read in the manner of a statute and construed with pedantic rigidity. In **Amardeep Singh v. Harveen Kaur** (supra), this Court held that the statutory waiting period of at least six months mentioned in Section 13B(2) of the Hindu Marriage Act was not mandatory but directory and that it would be open to the Court to exercise its discretion to waive the requirement of Section 13B(2), having regard to the facts and circumstances of the case, if there was no possibility of reconciliation between the spouses, and the waiting period would serve no purpose except to prolong their agony.”

4. In the present case, the parties got married on 30.11.2016. Their marriage was consummated; however, no child was born out of wedlock. Due to disputes between the parties, they decided to part their ways and are not cohabiting as husband and wife since 02.10.2020. The parties have also stated that all efforts of reconciliation and resolution of the differences by their family members and well-wishers had failed at multiple forums. Realising the agony and pain of an abusive marriage, the parties had reached an overall settlement and executed the settlement deed dated 21.10.2021, resolving all their pending disputes and claims. In the present case, both the parties are well educated and independent individuals who have mutually decided the fate of their marriage. They are at an age where they may start a new life if given a chance. However, keeping them tied to a legal bond would only mean snatching away from them the opportunity ever to lead a fulfilling life.

5. Accordingly, we set aside the impugned order. We do not consider it appropriate to remand the matter to the Family Court since the parties have been separated since 02.10.2020. They have arrived at an overall settlement concerning all the inter se disputes and claims. The counsel also informs us that other terms and conditions of the settlement have already been adhered to. Even otherwise, 18 months from the date of separation of the parties would expire on 02.04.2022. Considering the fact that not even a month is left for that date to arrive, we, accordingly, allow the same and pass a decree of divorce by mutual consent of the parties under Section 13B of the Hindu Marriage Act, 1955 after waiving the statutory period under Section 13 B of the said Act.

6. The appeal stands disposed of.

7. Dasti.