IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

ON THE 12th OF OCTOBER 2022

MISC. PETITION No.4682 of 2022

Between:-

SMT. VANDANA GOYAL

…..PETITIONER

(SHRI N.K. GUPTA, SENIOR ADVOCATE WITH SHRI H.D. SINGH - ADVOCATE)

AND

PRASHANT GOYAL, [illegible]

…..RESPONDENTS

(BY SHRI U.K. SHRIVAS - ADVOCATE)

This petition coming on for admission this day, the court passed the following:

ORDER

(1) This Misc. Petition under Article 227 of the Constitution of India had been preferred against an order dated 29th of September, 2022 passed by Principal Judge, Family Court, Gwalior, in HMA Case No.1093A/2022, refusing the prayer of the petitioner, wife and the respondent, husband, to waive the requirement under Section 13B(2) of the Hindu Marriage Act, 1955 to make the motion for a decree of divorce after at least six months from the date of filing the petition for divorce by mutual consent under Section 13B (1) of the said Act.

(2) The petitioner and the respondent, both of whom are educated and well placed in life (as both are in Private Service), were married according to Hindu ties on 16/2/2020. Admittedly, on account of irreconcilable differences, the petitioner and respondent separated on 1/3/2020 that is, precisely after 12 days of marriage.

(3) On 22/08/2022, after over one year of separation, the petitioner and the respondent filed a petition in the Family Court under Section 13B of the Hindu Marriage Act for a decree of divorce by mutual consent. Section 13B of the Hindu Marriage Act reads as under:

> "13B Divorce by mutual consent.
>
> (1) Subject to the provisions of this Act a

> petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.
>
> (2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in subsection (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree."

(4) In terms of Section 13B(1) of the Hindu Marriage Act, the parties to a marriage might file a petition for dissolution of marriage, by decree of divorce by mutual consent, on the ground that that they have been living separately for a period of one year or more, and that they have not been able to live together and have mutually agreed that the marriage should be dissolved.

(5) Sub-section (2) of Section 13B of the Hindu Marriage Act

provides that the Court shall pass a decree of divorce, declaring the marriage to be dissolved with effect from the date of the decree, on the motion of both the parties, made not earlier than six months after the date of presentation of the petition referred to in subsection (1) of Section 13B, but not later than 18 months after the said date, after making necessary enquiries, if the petition is not withdrawn in the meantime.

(6) Section 14 provides that notwithstanding anything contained elsewhere in the Hindu Marriage Act, it shall not be competent to the Court to entertain any petition for dissolution of a marriage by a decree of divorce, unless on the date of presentation of the petition, one year has elapsed since the date of marriage.

(7) In terms of the proviso to Section 14, the Court may, on application made to it, in accordance with such rules as may be made by the High Court, allow a petition to be presented before one year has elapsed since the date of marriage, on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent. In this case, the petition under Section 13B was filed after one year had elapsed from the date of marriage.

(8) On 28/09/2022, the petitioner and the respondent moved an application before the Family Court, seeking waiver of the six months waiting period under section 13B(2) of the Hindu Marriage Act, to make the motion for the Court to pass a decree of

divorce.

(9) By the order dated 29/09/2022, impugned herein, the Family Court dismissed the application as devoid of merits and not maintainable. The case file was directed to be put up on 3rd, of March, 2023 for further orders. The Family Court held:

> "As per the guidelines laid down by the Hon'ble Supreme Court in case titled **Amardeep Singh Vs. Harveen Kaur, reported in AIR 2017 SC 4417** the case of the petitioners does not fall within the parameters fixed for waiving off the stipulated period of six months as mentioned under Section 13B (2) of the Hindu Marriage Act. In the above mentioned case it has been clearly laid down that where the Court dealing with the matter is satisfied that a case is made out to waive the statutory period under Section 13B (2) of the Hindu Marriage Act, it can do so after considering the following:
>
> 1) The statutory period of six months specified in Section 13B in addition to the statutory period of one year under Section 13B of separation of parties is already over before the first motion itself.
>
> 2) ….. …..... …....
>
> 3) ….. …..... …....
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> 4) …. …..... …....
>
> The application is accordingly dismissed being devoid of merits and not maintainable."

(10) The provisions of the Hindu Marriage Act exhibits an integral respect for the institution of marriage, which

contemplates the sacramental union of a man and a woman. However, there may be circumstances in which it may not reasonably be possible for the parties to the marriage to live together as husband and wife. The Hindu Marriage Act, therefore has provisions for annulment of marriage in specified circumstances, which apply to marriages which are not valid in the eye of law and provisions of judicial separation and dissolution of marriage by decree of divorce on grounds provided in Section 13 (1) of the said Act, which apply to cases where it is not reasonably possible for the parties to a marriage to live together as husband and wife. Section 13B enables the parties to a marriage to avoid and/or shorten unnecessary acrimonious litigation, where the marriage may have irretrievably broken down and both the spouses may have mutually decided to part. But for Section 13B, the defendant spouse would often be constrained to defend the litigation, not to save the marriage, but only to refute prejudicial allegations, which if accepted by Court, might adversely affect the defendant spouse. Thus, Section 13B (2) of the Hindu Marriage Act was enacted to provide for a cooling period of six months from the date of filing of the divorce petition under Section 13B(1), in case the parties should change their mind and resolve their differences. After six months if the parties still wish to go ahead with the divorce, and make a motion, the Court has to grant a decree of divorce declaring the marriage dissolved with effect from the date of the decree, after making

such enquiries as it considers fit.

(11) The object of Section 13B(2) read with Section 14 appears to be that to save the institution of marriage, by preventing hasty dissolution of marriage. It is often said that "time is the best healer". With passage of time, tempers cool down and anger dissipates. The waiting period, thus, gives the spouses time to forgive and forget. Even otherwise, the cooling period gives the couple time to deliberate and take a considered decision as to whether they should really put an end to the marriage for all times to come. Where there is a chance of reconciliation, however slight, the cooling period of six months from the date of filing of the divorce petition should be enforced. However, if there is no possibility of reconciliation, it would be meaningless to prolong the agony of the parties to the marriage. Thus, if the marriage has broken down irretrievably, the spouses have been living apart for a long time, but not been able to reconcile their differences and have mutually decided to part, it is better to end the marriage, to enable both the spouses to move on with the life.

(12) In **Amardeep Singh Vs. Harveen Kaur (supra)**, relied upon by the Family Court it had been held that :

> "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 13B (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 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 32A 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. 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 in the discretion of the court concerned.
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> Since I am of the view that the period mentioned in section 13B(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."

(13) The Family Court, thus, had misconstrued the judgment of this Court in **Amardeep Singh Vs. Harveen Kaur (supra)** and proceeded on the basis that Supreme Court has held that the conditions specified in 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 aforesaid 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.

(14) Here it would be germane to refer the judgment of the Supreme Court in the matter of **Amit Kumar vs Suman Beniwal, 2021 SCC OnLine SC 1270**, wherein in para 23 it is held as under:

> "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 Vs. 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."

Further in Para 27 and 28 the Supreme Court had observed that:

> "27. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13B (2) of the Hindu Marriage Act,

the Court would consider the following amongst other factors:

(i) the length of time for which the parties had been married;

(ii) how long the parties had stayed together as husband and wife;

(iii) the length of time the parties had been staying apart;

(iv) the length of time for which the litigation had been pending;

(v) whether there were any other proceedings between the parties;

(vi) whether there was any possibility of reconciliation;

(vii) whether there were any children born out of the wedlock;

(viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.

28. In this Case, as observed above, the parties are both well educated and highly placed government officers. They have been married for about 15 months. The marriage was a nonstarter. Admittedly, the parties lived together only for three days, after which they have separated on account of irreconcilable differences. The parties have lived apart for the entire period of their marriage except three days. It is jointly stated by the parties that efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife. Even after over 14 months of

> separation, the parties still want to go ahead with the divorce. No useful purpose would be served by making the parties wait, except to prolong their agony."

(15) Similar is the situation in the present matter. The parties had only lived together for a period of 12 days and as such the marriage was a nonstarter. Both of them had stated that all the efforts of reconciliation had failed and they are unwilling to live together as husband and wife, they had even settled the amount of permanent alimony, which is Rs. One crore (Demand drafts No. 056621 and 056622 amounting to Rs.50 Lakhs each deposited in the Family Court) and only because 9 days fell short of completing the period of 1 ½ years before the first motion, that too on the date of filing of the consent divorce petition i.e. on 22/08/2022, which period is now over, the learned Family Court was not justified in rejecting the application for waiving off the period of six months as provided under section 13B (2) of the Act and thus no useful purpose would be served by making the parties to wait.

(16) The petition is, therefore, allowed. The impugned order dated 29/09/2022 passed by the Family Court, Gwalior is set aside. Since the period mentioned in the Section 13-B(2) is not mandatory but directory, the Family Court hereby is directed to decide the petition u/s 13B pending before it afresh, exercising its discretion akin to the facts and circumstances of the case.

(17) With the aforesaid directions the petition is disposed off.

Let the parties remain present before the Court on **18/10/2022**.

E-copy/Certified copy as per rules/directions.

(Milind Ramesh Phadke)
Judge

Pawar*****