A.F.R.

Neutral Citation No. - 2024:AHC:54496

Court No. - 52

Case :- MATTERS UNDER ARTICLE 227 No. - 1607 of 2024

Petitioner :- Layak Singh
Respondent :- Smt Ekta Kumari
Counsel for Petitioner :- Puneet Bhadauria

Hon'ble Manish Kumar Nigam,J.

1. Heard learned counsel for the petitioner and perused the record.

2. This petition has been filed challenging the order dated 10.01.2014 passed by Principal Judge, Family Court, Agra rejecting the application filed by the petitioner as well as opposite party under Section 13-B(2) of the Hindu Marriage Act for waiving off the ‘cooling period’ in H.M.A. Case No. 2978 of 2023 (Layak Singh v. Smt. Ekta Kumari, under Section 13-B of the Hindu Marriage Act).

3. Brief facts of the case are that the petitioner Layak Singh was married to the opposite party Smt. Ekta Kumari on 29.06.2020 at Sundarpada Thana Nai Ki Mandi, District Agra. Soon after the marriage, both the parties found that it was not possible for them to live together and opposite party Ekta Kumari left the matrimonial home on 28.10.2020. Despite best efforts made by the family members and other members of the society, they failed to resolve their dispute and were adamant to take divorce. Both the parties lodged cases, against each other. The petitioner as well as the opposite party came to an agreement that the petitioner would pay a sum of ₹ 6,00,000/- to the opposite party and they would divorce each other. An application under Section 13-B of the Hindu Marriage Act was filed by the petitioner as well as opposite party

on 10.11.2023 for divorce on the basis of compromise entered into between the parties. On 10.11.2023, the Principal Judge, Family Court, Agra, fixed 13.03.2024 for mediation and 13.05.2024 for second motion. On 09.01.2024, a joint application was moved by the petitioner as well as opposite party for early disposal of divorce petition on the ground that the petitioner had applied for service in various states outside the State of Uttar Pradesh but because of pendency of the case, the petitioner was unable to join the service. It was also mentioned that the opposite party also wants to get the petition decided expeditiously so that she may live separately. The application so filed by the petitioner was rejected by the Principal Judge, Family Court, Agra by its order dated 10.01.2024, hence the present petition.

4. Contention of the learned counsel for the petitioner is that the petitioner and opposite party are residing separately for more than three years and all the efforts of conciliation between them had already failed. Both the parties had decided to part ways and had agreed for dissolving their marriage. It is further contended by learned counsel for the petitioner that Principal Judge, Family Court, Agra had rejected the application on the ground that cooling period can be waived only by Supreme Court in exercise of power under Article 142 of Constitution of India. The view taken by the Principal Judge Family Court, Agra was erroneous. It is next contended by learned counsel for the petitioner that as per the agreement, the petitioner had paid a sum of ₹ 6,00,000/- by means of a bank draft to the opposite party and both the parties had agreed and are still agree for divorce by mutual consent. In this regard, learned counsel for the petitioner has relied upon the judgment of Supreme Court in case of **Amardeep Singh v. Harveen Kaur** reported in **(2017) 8 SCC 466**.

5. Before considering the submissions made by the learned counsel for the petitioner, it would be appropriate to consider the relevant statutory provision.

6. Section 13-B of Hindu Marriage Act, 1955 is as follows:

> *"13-B. 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 sub-section (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."*

7. From the perusal of the order impugned, it reflects that the Principal Judge, Family Court, Agra after noting the facts of the case, considered various judgments of Supreme Court including the judgment of **Amardeep Singh v. Harveen Kaur (Supra)** and judgment in case of **Amit Kumar v. Suman Beniwal** reported in **2021 SCC Online SC 1270**, the Principal Judge, Family Court has held as under:

> *"In the facts and circumstances of this Case, it is not appropriate for this Court to waive the statutory period of six months as provided u/S, 13-B(2) of the Hindu Marriage Act, 1955 before completing the mediation/conciliation efforts, grounds mentioned in the instant application and as per law provided by the Hon'ble Supreme Court in Anil Kumar Jain Vs. Maya Jain (Supra)."*

8. The Principal Judge, Family Court, Agra relied upon the judgment in case of **Anil Kumar Jain v. Maya Jain** reported in **(2009) 10 SCC 415** wherein following has been held:

> *"29. In the ultimate analysis the aforesaid discussion throws up two propositions. The first proposition is that although irretrievable break-down of marriage is not one of the grounds indicated whether under Sections 13 or 13-B of the Hindu Marriage Act, 1955, for grant of divorce, the said doctrine can be applied to a proceeding under either of the said two provisions only where the proceedings are before the Supreme Court. In exercise of its extraordinary powers under Article 142 of the Constitution the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in Section 13-B of the aforesaid Act. This doctrine of irretrievable break-down of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under Article 142 of the Constitution. Neither the civil courts nor even the High Courts can, therefore, pass orders before the periods prescribed under the relevant provisions of the Act or on grounds not provided for in Section 13 and 13-B of the Hindu Marriage Act, 1955.*
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> *30. The second proposition is that although the Supreme Court can, in exercise of its extraordinary powers under Article 142 of the Constitution, convert a proceeding under Section 13 of the Hindu Marriage Act, 1955, into one under Section 13-B and pass a decree for mutual divorce, without waiting for the statutory period of six months, none of the other Courts can exercise such powers. The other Courts are not competent to pass a decree for mutual divorce if one of the consenting parties withdraws his/her consent before the decree is passed. Under the existing laws, the consent given by the parties at the time of filing of the joint petition for divorce by mutual consent has to subsist till the second stage when the petition comes up for orders and a decree for divorce is finally passed and it is only the Supreme Court, which, in exercise of its extraordinary powers under Article 142 of the Constitution, can pass orders to do complete justice to the parties."*

9. The provisions of the Hindu Marriage Act demonstrate an inherent respect for the institution of marriage, which contemplates the sacramental union of a man and a woman for life. 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.

10. 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.

11. Section 13B incorporated in the Hindu Marriage Act with effect from 27.5.1976, which provides for divorce by mutual consent, is not intended to weaken the institution of marriage. Section 13B puts an end to divorce proceedings between spouses, often undefended, but time consuming by reason of lengthy process of procedures. Section 13B also enables the parties to a marriage to avoid and/or shorten unnecessary bitter 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.

12. Legislature has, in its wisdom, enacted Section 13B (2) of the Hindu Marriage Act 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.

13. The object of Section 13B(2) read with Section 14 is 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 gives the spouses time to forgive and forget. If the spouses have children, they may, after some time, think of the consequences of divorce on their children, and reconsider their decision to separate. Even otherwise, the cooling period gives the couple time to think and reflect and take a considered decision as to whether they should really put an end to the marriage for all time to come.

14. In case of **Amardeep Singh v. Harveen Kaur (Supra)**, the question which arose for consideration before the Supreme Court was whether the minimum period of six months stipulated under Section 13-B(2) of Hindu Marriage Act, 1955 for a motion for passing decree of divorce on the basis of mutual consent is mandatory or can be relaxed in any exceptional situation. After considering the relevant case law, the Supreme Court held as under in paragraph no. 9 of the judgment, which is as follows:

> *"9. After considering the above decisions, we are of the view that since Manish Goel (supra) holds the field, in absence of contrary decisions by a larger Bench, power under Article 142 of the Constitution cannot be exercised contrary to the statutory provisions, especially when no proceedings are pending before this Court and this Court is approached only for the purpose of waiver of the statute."*

15. Thereafter, the Supreme Court considered the question whether Section 13-B (2) of the Hindu Marriage Act, 1955 is to be read as mandatory or discretionary and held that the period mentioned in Section 13-B(2) of the Hindu Marriage Act is not mandatory but

directory. It will be open to the court to exercise its discretion is facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.

16. In paragraph no. 18 & 19 of the **Amardeep Singh v. Harveen Kaur (Supra),** the Apex Court held as under:

> *"18. 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 13B(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."*
>
> *19. The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver."*

17. In case **Smt. Pratibha v. Gaurav** passed in **Matter Under Article 227 No. 1886 of 2020 decided on 04.03.2020**, this Court held that the object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available option. The amendment was inspired by a thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of cooling off the

period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chance of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.

18. The Apex Court in case of **Amit Kumar v. Suman Beniwal** reported in **2021 SCC Online SC 1270**, has held as under:

> *"21. The factors mentioned in Amardeep Singh v. Harveen Kaur (supra), in Paragraph 19 are illustrative and not exhaustive. These are factors which 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.*
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> *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 has 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 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.*
>
> *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.*

> *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:*
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> *(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."*

19. 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.

20. In the present case, the petitioner (husband) is aged about 34 years and the opposite party (wife) is aged about 32 years. They got married on 29.06.2020 and are living separately since 28.10.2020. It is the case of the parties that every effort to resolve their difference failed despite best efforts being made by their family

members and other persons of the society. It is further admitted that since both the parties failed to reconcile their dispute they agreed for divorce by mutual consent and entered into a settlement according to which the husband had to pay a sum of Rs. 6,00,000/- to the wife. In the application which was jointly made by both the parties for waiving of the cooling period, it was stated that the husband was in lookout for a job outside of State of Uttar Pradesh and because of pendency of this proceeding, he was not able to join his new job and further the wife also wanted to restart her life after the divorce. In this case marriage was a non starter. Admittedly, the parties lived together only for few months. After which they have separated on account of irreconcilable differences. It is jointly stated by the parties that the efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife. Even after over three years of separation, the parties still wants to go ahead with divorce. As the parties are living separately for more than three years soon after their marriage and they have entered into a compromise to settle their dispute amicably and has agreed for divorce, specially considering the age of the parties, no useful purpose would be served by making the parties wait except to prolong their agony rather it will be useful that both the parties may be given a chance to restart their life afresh after the divorce. It is also admitted, in the present case, that there are no issues out of the wedlock of the parties.

21. The order passed by the Principal Judge, Family Court, Agra is not consistent with the judgment of Supreme Court in case of **Amardeep Singh v. Harveen Kaur** (Supra) and **Amit Kumar v. Suman Beniwal** (Supra).

22. Learned counsel appearing for petitioner also submitted that the application filed by the petitioner as well as opposite party for

waiving off the cooling period under Section 13-B(2) of Hindu Marriage Act, 1955 be itself allowed by this Court instead of remanding the matter back to the Principal Judge, Family Court, Agra after setting aside the order to decide the same afresh. In this connection learned counsel for the petitioner relied upon the judgment of Supreme Court in case of **Hari Vishnu Kamath v. Syed Ahmad Ishaque and others** reported in **1954 (2) SCC 881** wherein the Supreme Court held:

> *"We are also of opinion that the Election Tribunals are subject to the superintendence of the High Courts under article 227 of the Constitution, and that superintendence is both judicial and administrative. That was held by this Court in Waryam Singh v. Amarnath (1954) 1 SCC 51, where it was observed that in this respect article 227 went further than section 224 of the Government of India Act, 1935, under which the superintendence was purely administrative, and that it restored the position under section 107 of the Government of India Act, 1915. It may also be noted that while in a certiorari under article 226 the High Court can only annul the decision of the Tribunal, it can, under article 227, do that, and also issue further directions in the matter. We must accordingly hold that the application of the appellant for a writ of certiorari and for other reliefs was maintainable under articles 226 and 227 of the Constitution. (para 23)"*

23. In case of **Industrial Credit and Investment Corporation of India Ltd. v. Grapco Industries Ltd. and others** reported in **(1999) 4 SCC 710,** the Supreme Court has held as under:

> *"14. The High Court also said that on merits as well the Tribunal was wrong in granting an ex parte order. It is not that High Court itself considered the merits of the case. The objection of the High Court was twofold: (1) the Tribunal did not give any reasons, and (2) it was an omnibus order and that there was no reference even to prayers in the application and that the prayers stood allowed "in terms of entire hog". Criticism of the High Court appears to be correct on that account. Judgment of the High Court, however, does not refer at all to the facts of the case and it proceeds more on abstract principles of law. There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction*

> *under Article 227 of the Constitution if the circumstances so require. There is no doubt that High Court can even interfere with interim orders of the courts and tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. When the facts of the case brought before the High Court are such that High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned order of the Tribunal and leaving everything in vacuum."*

24. Though, the application under Section 13-B of Hindu Marriage Act has been filed jointly by both the parties and also that the application under Section 13-B(2) of Hindu Marriage Act has been filed by both the parties jointly. Since the opposite party has not appeared before this Court, it would be appropriate that a direction be issued to the Principal Judge, Family Court, Agra to pass appropriate orders keeping in view the dictum of the Supreme Court in case of **Sureshta Devi v. Om Prakash** reported in **(1991) 2 SCC 25** wherein the Apex Court has held that the consent given by the parties to the filing of a petition for a mutual divorce had to subsist till a decree was passed on the petition and that in the event, either of the party withdrew the consent before passing of the final decree, the petition under Section 13-B of Hindu Marriage Act, 1955 would not survive and would have to be dismissed.

25. In view of the discussion made above, the writ petition is **allowed** and the judgment and order dated 10.01.2014 passed by Principal Judge, Family Court, Agra in H.M.A. Case No. 2978 of 2023 (Layak Singh v. Smt. Ekta Kumari), is hereby **quashed**.

26. The application filed by the petitioner as well as opposite party jointly for waiving off the 'cooling period' under Section 13-B (2) of Hindu Marriage Act, is also **allowed**.

27. The Principal Judge, Family Court, Agra is directed to consider and decide application filed by the petitioner as well as opposite party under Section 13-B of Hindu Marriage Act registered as H.M.A. Case No. 2978 of 2023 (Layak Singh v. Smt. Ekta Kumari), in accordance with law, expeditiously, preferably within a period of **two months** from the date of production of a certified copy of this order after giving opportunity of hearing to the parties concerned and without granting unnecessary adjournments to either of the parties provided that there is no other legal impediment.

Order Date :- 21.3.2024
Ved Prakash

(Manish Kumar Nigam,J.)