

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-6628-2023 (O&M)

Date of decision: 22.12.2023



...Appellant

V/s



...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Mr. Amandeep S. Rai, Advocate
for the appellant-husband.

Mr. Avtar Singh Sandhu, Advocate for the respondent-wife.

SUMEET GOEL, J.

1. The challenge in the present appeal is to an order dated 17.10.2023 passed by Principal Judge, Family Court, Patiala whereby application filed under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter to be referred as 'the Act') for waiving off the statutory period of six months has been rejected.

2. Succinctly facts first, as stated in the pleadings by the parties.

2.1 The marriage between the parties was solemnized on 19.02.2018 according to Sikh rites and ceremonies. They cohabited as husband and wife at village Dharkraba, Tehsil and District Patiala but no issue was born out of this wedlock. However, subsequently the parties started to live separately since January 2020, due to temperamental issues between them. As there were no chances of their reconciliation, the parties on 25.08.2023 filed a petition under Section 13-B of the Act before the Family Court seeking decree of divorce by mutual consent. By an order

dated 28.08.2023, the Family Court recorded that the requirement of Section 13B(1) of the Act have been satisfied as the parties have been living separately for a period of more than one year but however with regard to Section 13B(2) of the Act, the parties were required to move a second motion, in accordance with the time frame provided therein. Accordingly, the matter was adjourned to 05.03.2024.

2.2 On 19.09.2023, the parties jointly moved an application before the Family Court seeking waiving off the statutory period of six months under Section 13B(2) of the Act. The Family Court, vide impugned order dated 17.10.2023, dismissed the application in view of the fact that the case of the appellants does not fall within the parameters fixed for waiving off the stipulated period of six months as mentioned under Section 13B(2) of the Act. Aggrieved by this order, the instant appeal has been filed.

3. Learned counsel for the appellant-husband has argued that the learned Family Court has adopted an unreasonable restrictive interpretation while adjudicating upon the application in question. According to him, as a period of 18 months have now admittedly elapsed since the parties started living separately, the application seeking waiver of the period of six months ought to have been allowed.

4. Mr. Avtar Singh Sandhu, Advocate appearing for the respondent-wife submits that he has no objection to the petition being allowed as there is no possibility of subsistence of marriage.

5. We have heard learned counsel for the parties and perused the available record with their assistance.

6. The prime point for determination in the present matter is as to whether the parties are entitled to the waiver off the statutory period of six

months after presentation of petition for divorce by mutual consent under Section 13B(2) of the Act.

Relevant Statute

7. Section 13-B of the Hindu Marriage Act, 1955 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 solemnized 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 solemnized 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.”

Section 23 of the Hindu Marriage Act, 1955 reads as under:-

23. Decree in proceedings.—*(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that-*

XXXX

XXXX

XXXX

[(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and

XXXX

XXXX

XXXX

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties: 5 [Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

Relevant Case Law

8. The precedents, relevant to the matter in issue, are as follows:

(i) A Five Bench of the Hon'ble Supreme Court in judgment titled as *Shilpa Sailes vs. Varun Sreenivasan, 2023(3) RCR (Civil) 107*, has held as under:-

“17. Analysing the provisions of sub-section (2) to Section 13-B of the Hindu Marriage Act, this Court in Amardeep Singh v. Harveen Kaur (2017) 8 SCC 746 went into the question of whether the cooling off period of six months is mandatory or discretionary. It was held that the cooling off period can be waived by the court where the proceedings have remained pending for long in the courts, these being cases of exceptional situations. It was held thus:

“14. The learned Amicus Curiae 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 the judgments of the Andhra Pradesh High Court in K. Omprakash v. K. Nalini, Karnataka High Court in Roopa Reddy v. Prabhakar Reddy, Delhi High Court in Dhanjit Vadra v. Beena Vadra and Madhya Pradesh High Court in Dineshkumar Shukla v. Neeta. Contrary view has been taken by the Kerala High Court in M. Krishna Preetha v. 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?

xxxxxxxx

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 under 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 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.”

The time gap is meant to enable the parties to cogitate, analyse and take a deliberated decision. The object of the cooling off period is not to stretch the already disintegrated marriage, or to prolong the agony and misery of the parties when there are no chances of the marriage working out. Therefore, once every effort has been made to salvage the marriage and there remains no possibility of reunion and cohabitation, the court is not powerless in enabling the parties to avail a better option, which is to grant divorce. The waiver is not to be given on mere asking, but on the court being satisfied beyond doubt that the marriage has shattered beyond repair. The judgment in Amardeep Singh (supra) refers to several questions that the court would ask before passing an order one way or the other. However, this judgment proceeds on the interpretation of Section 13-B(2) of the Hindu Marriage Act, and does not examine whether this Court can take on record a settlement agreement and grant divorce by mutual consent under Section 13-B of the Hindu Marriage Act in exercise of the power under Article 142(1) of the Constitution of India.”

(ii) The Hon’ble Supreme Court in judgment titled as ***Amit Kumar vs. Suman Beniwal, 2022(1) RCR (Civil) 569***, has 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 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.”*

Analysis (re legal principles)

9. Marriage, as per Hindu Law, is sacred in nature. The Hindu Marriage Act, 1955 was enacted to codify the law relating to marriage among Hindus. It was broadly based on maxim ‘*conjunctio maritum perminae est de nature*’ i.e. to keep husband and wife together is the law of nature & maxim ‘*viret unor consentur in lege una persona*’ i.e. husband and wife are considered one in law. However, Section 13-B of the Act was introduced in the Act by way of Act 68 of 1976. An analytical perusal of

this provision shows that the same is irenic in essence as compared to Section 13 of the Act which is based on fault proving philosophy. Hence provision of Section 13-B deserves to be interpreted and applied accordingly since it is aimed at bringing about a peaceful and mutually agreeable final solution to matrimonial discord.

9.2 The Court while, considering the prayer for waiving off the cooling off periods, ought to be satisfied that there exist requisite grounds to accord such permission and there is no concealment/misrepresentation on behalf of parties. The Court is required to satisfy itself in terms of Section 23 of the Act. No detailed enquiry, as akin to a trial, is ordinarily required to be undertaken by the Court while considering such an application. The Court would be well within its discretion to look into the pleadings and affidavits presented before it for such evaluation.

10. The principles of law, as can be culled out from abovesaid discussion, are enumerated as below:

- I. While granting or refusing permission, for waiving off the cooling off period under Section 13-B(2) of the Hindu Marriage Act, 1955, the Court ought to consider the following factors:
 - (a) How long the parties have been married?
 - (b) How long they have been staying apart?
 - (c) Are there any other proceedings between the parties? If yes, what is the status of such proceedings and whether all such other proceedings are also being settled?
 - (d) Whether declining of such permission will prolong the agony of parties?
 - (e) Whether there is any misrepresentation or concealment of material facts by parties while seeking such permission?
 - (f) Whether there is any child born out of the wedlock? If yes, how the interest of child is being secured?

(g) Whether there is any reasonable probability of reconciliation between parties?

(h) Age, educational qualification and economic position of the parties especially the wife?

The factors enumerated hereinabove are illustrative in nature and not exhaustive. The Court may consider such other factor(s) as it deems appropriate in the facts and circumstances of a given case.

II. The Court is not to ordinarily enter into an elaborate enquiry while considering an application for waiving off period since the Court is required to take a pacifist view point when dealing with a case under Section 13-B of the Act. The Court would generally consider the pleadings and material placed before it to take a view. However, if the facts and circumstances of a case so warrant, Court may undertake an elaborate enquiry.

Analysis (re facts of the present case)

11. The parties to the *lis* were married on 19.02.2018. After short span of cohabitation, relations between the parties got strained and they started living separately since January 2020. Out of this wedlock, there is no child born. Both of them had stated that all the efforts to 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.36,00,000/- in lump sum in lieu of dowry articles, present, past and future maintenance to respondent-wife. The parties have also expressed their intention to remarry. The Hon'ble Supreme Court has clearly held that the period mentioned in Section 13-B(2) of the Act is not mandatory but directory in nature and a Court may exercise this discretion to waive off the statutory period of six

months in the facts and circumstances of a case especially when there is no possibility of the parties to resume cohabitation and there are chances of alternative rehabilitation. The factual conspectus of instant case reflects that parties have been living separately since January 2020; there is no material on record to show that there is any concealment or misrepresentation by parties; no child is born out of the wedlock; the parties are educated; there are no chances of settlement/reconciliation between them; parties have expressed intention to remarry and permanent alimony amount of Rs.36.00 lacs payable to wife by husband has also been agreed upon. In such a scenario, it is pragmatic to waive off the statutory period of 06 months under Section 13-B(2) of the Act.

Decision

12. Resultantly, the instant appeal is allowed; the impugned order dated 17.10.2023 is set-aside and the statutory period of six months prescribed under Section 13-B(2) of the Act is waived off. The learned Family Court is directed to accordingly proceed further with the hearing of petition under Section 13-B of the Act as per law. No order as to costs.

(SUMEET GOEL)
JUDGE

(SUDHIR SINGH)
JUDGE

December 22, 2023

Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No