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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 07th May, 2019

\+ CM (M) 684/2019

J.S.V ..... Petitioner

Through: Mr. Jitender Singh, Advocate.

versus

V.P.G. ..... Respondent

Through: Mr. Dhiraj Kumar & Mr. Rupenshu Pratap Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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1. Issue notice. Mr. Dhiraj Kumar, Advocate accepts notice. By consent of the parties, the petition is heard finally.

2. The challenge in this petition is to an order dated 01.05.2019 by which the Principal Judge, Family Court, Patiala House has rejected the application of the petitioner for waiving the statutory period of six months under Section 13B(2) of the Hindu Marriage Act, 1955.

3. The petitioner [wife] and the respondent [husband] were married on 27.07.2017 and started living separately from 25.10.2017. In the course of proceedings under the Domestic Violence Act, 2005, the parties settled their disputes through mediation, and the settlement was recorded in a

Memorandum of Understanding (MOU) dated 10.10.2018. The MOU, *inter alia*, provided for the marriage to be dissolved by mutual consent, and for payment of a sum of ₹3,50,000/- by the respondent to the petitioner in installments.

4. Accordingly, the parties moved a petition under Section 13B (1) of the Act before the Principal Judge, Family, Patiala House Courts seeking dissolution of their marriage. By an order dated 22.11.2018, the petition was allowed and it was recorded that the requirements of Section 13B (1) of the Act have been satisfied. However, in view of Section 13B (2), the petitioner was required to move a second motion petition, in accordance with the time frame provided therein. On 20.12.2018, the parties jointly filed an application for waiver of the statutory period of six months provided in Section 13B (2), relying upon the judgment of the Supreme Court in *Amardeep Singh* v. *Harveen Kaur* (2017) 8 SCC 746. The Family Court, by an order dated 08.01.2019, adjourned the matter to 27.04.2019, by which time the composite period of 18 months of separation – one year provided in Section 13B (1) and six months in Section 13B (2) - would have lapsed. However, on the adjourned date, the Trial Court declined to entertain the matter, in view of the fact that the period of 18 months of separation had not expired prior to the filing of the first motion petition. This order was challenged before this Court in CM (M) 672/2019. The Court recorded that the petitioner herein intended to enter into marriage with another person on 02.05.2019, and therefore, observed that it would be appropriate if the Learned Family Court heard the waiver application on 01.05.2019.

5. The impugned order dated 01.05.2019 has been passed pursuant to the aforementioned direction. The Family Court noticed the judgment in *Amardeep Singh* (supra) and held that the parties herein are not entitled to the benefit thereof, as the statutory period of 18 months had not passed prior to the filing of the first motion petition. The application has, therefore, been rejected with the following observations:-

> "5. *I have heard arguments and have gone through the petition filed by the petitioners. The date of separation between the parties mentioned in the petition is 25.10.2017. The petition for grant of divorce under Section 3 B (1) of HMA was filed on 14.11.2018, therefore, at the time of filing of first motion only about 13 months of separation were over.*
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> *6. It is clear from the judgment relied upon by the petitioners that application for waiving of six months in second motion petition can be allowed only in a case wherein the statutory period of six months specified in 13 B (2), in addition to the statutory period of one year under Section 13 B (1) of separation of the parties is already over before the first motion itself.*
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> *7. It is therefore clear that a total period of 18 months of separation should be over at the time of filing of the petition under Section 13 B (1) and only then the application for waiver of mandatory period of six month under Section 13 B (2) of HMA can be allowed. In the present petition at the time of filing of petition under Section 13 B (1) only about 13 months of separation had passed.*
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> *8. Therefore, the application filed by the petitioners for waiving of the period of six months under Section 13 B (2) can not be allowed.*
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> *9. Accordingly, the said application is dismissed. Copy of this order be given dasti.*"

6. Mr. Jitender Singh, learned counsel appearing for the petitioner, submits that the Family Court has adopted an unreasonably restrictive

interpretation of the judgment of the Supreme Court. According to him, as a period of 18 months have now admittedly elapsed since the parties started living separately, the application for waiver of the period of 6 months ought to have been allowed. Mr.Dhiraj Kumar, learned counsel for the respondent submits that the respondent has no objection to the petition being allowed and the benefit of the judgment being given in the present case.

7. Section 13B of the Act provides as follows:-

> *"13-B. Divorce by mutual consent.-*
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> *(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, 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.*
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> *(2) On the motion of both the parties made 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 mean time, 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."*

8. This provision has been interpreted in the judgment in *Amardeep Singh* (supra), upon which reliance has been placed by Mr. Jitender Singh. After considering earlier authorities on the subject, the Supreme Court has observed as follows:-

"*17. 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 options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling-off 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 the 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 ther are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.*

18. In determining the question whether provision is mandatory or directory, language alone is not always decisive. The court has to have the regard to the context, the subject-matter and the object of the provision. This principle, as formulated in Justice G.P. Singh's Principles of Statutory Interpretation (9th Edn., 2004), has been cited with approval in Kailash v. Nanhku as follows: (SCC pp. 496-97, para 34)

"34.…The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oftquoted passage Lord Campbell said: "No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered."

"'For ascertaining the real intention of the legislature', points out Subbarao, J. 'the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the

provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by the some penalty; the serious or the trivial consequences, that flow therefrom; and above all; whether the object of the legislation will be defeated or furthered'. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory."(pp. 339-40)

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.

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."*

9. The Family Court has interpreted paragraph 19(i) of the aforesaid judgment, to hold that the statutory period of 6 months can be waived, only if the first motion itself has been filed after the expiry of 18 months from the date when the parties had started living separately. However, this interpretation appears to me to be an unduly literal interpretation, which may in a given case, such as the present one, have the consequence of nullifying the purposive interpretation preferred by the Supreme Court. A holistic reading of the Court's judgment leads instead to the conclusion that purposeless marriage which has no chance of reunion ought not to be prolonged.

10. The safeguards contained in the statue (including, *inter alia*, the period of one year between the separation of the parties and the first motion, and the period of six months between the first motion and the second motion) are intended to explore every avenue of reconciliation and avoid an impulsive decision to break a marriage. In the present case, there does not appear to be any likelihood of such reconciliation. The parties have lived separately since 25.10.2017 and the composite period of 18 months expired on 25.04.2019. The petitioner has also expressed her intention to enter into another marriage with a non-resident Indian, who is resident in Australia. Mr. Jitender Singh submits that, although the marriage had been fixed for 02.05.2019, it could not be solemnized on that date due to the fact that the present divorce proceedings had not concluded. However, it is submitted that the prospective bride-groom is in India until

10.05.2019, and the insistence on completion of the waiting period of 6 months would only prolong the petitioner's agony, contrary to the dictum of the Supreme Court in paragraph 19(iv) of the judgment. The parties have also attempted mediation and, in fact, the decision to dissolve their marriage was reached through a mediated settlement. The mandatory period of 6 months would also be over on 22.05.2019. Therefore, what is being sought in this petition is a waiver of about 15 days. The Supreme Court has clearly held that the period mentioned in Section 13B (2) is not mandatory but directory, and that a Court may exercise this discretion in the facts and circumstances of each case, when there is no possibility of the parties to resume cohabitation and there are chances of alternative rehabilitation. In the facts and circumstances of the present case, therefore, the petitioner's application for wavier of the mandatory period of 6 months ought to have been allowed.

11. The petition is therefore allowed. The order dated 01.05.2019 passed by the Family Court is, set aside and the application filed by the parties herein for waiving of the period of 6 months under Section 13B (2) is allowed. The second motion application pending before the Family Court shall be listed before the concerned Court on 09.05.2019.

12. A copy of the order be given *dasti* under the signatures of the Court Master.

PRATEEK JALAN, J.

May 07,2019
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