

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 6794/2022

Raju Singh S/o Jawan Singh, Aged About 34 Years, By Caste Rajput, Resident Of Village Chandna, Tehsil Sheoganj, District Sirohi.

-----Petitioner

Versus

Twinkle Kanwar W/o Raju Singh, Resident Of Village Botha, Raghunathgarh, District Pali.

-----Respondent

For Petitioner(s) : Mr. Pravin Vyas
For Respondent(s) : Mr. Kanishk Singhvi

HON'BLE MR. JUSTICE VIJAY BISHNOI

Judgment / Order

13/05/2022

This writ petition has been preferred on behalf of the petitioner being aggrieved with the order dated 26.04.2022 passed by the Family Court, Pali (for short 'the court below') in Civil Misc. Case No.26/2022 whereby, the application filed by the parties for waiving cooling-off period of six months has been rejected.

Brief facts of the case are that the parties have submitted a joint application under Section 13-B of the Hindu Marriage Act, 1955 (for Short 'the Act of 1955') seeking divorce by mutual consent. As per the contents of the application under Section 13-B of the Act of 1955, marriage of the petitioner and the respondent was solemnized on 07.02.2013 at Village Bota (Raghunathgarh), District Pali. It is mentioned in the application that out of the said wedlock, no issue is born to the parties. It is further mentioned in

the application that though the petitioner and the respondent lived together as husband and wife for quite some time, but later on differences cropped up between the parties and both of them started living separately from July, 2018 and now it is not possible for them to live together as husband and wife. It has specifically been mentioned in the application under Section 13-B of the Act of 1955, duly supported by an affidavit of both the parties that both of them are living separately from July, 2018 and since then, there is no relation between them. It is also mentioned in the application that the petitioner has already paid alimony amount to the respondent and it is agreed by the respondent that she will not claim any further amount from the petitioner in future.

The application under Section 13-B of the Act of 1955 was filed before the court below on 19.02.2022 and the next date in the matter is fixed on 20.08.2022.

A joint application was filed by the parties before the court below for waving six months' cooling-off period as provided under Section 13-B of the Act of 1955 on 26.04.2022, however, the court below has rejected the same while observing that the parties have failed to produce documents to prove the fact that both of them are living separately since July, 2018.

Learned counsels for the parties have submitted that both the petitioner and the respondent have stated on oath through affidavit that they are living separately since July, 2018 and, in such circumstances, there no requirement of producing any documentary evidence to prove the aforesaid fact.

Learned counsels for the parties have also placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of

Amardeep Singh Vs. Harveen Kaur, reported in **(2017) 8 SCC 746**.

Heard learned counsel for the parties and perused the impugned order.

The Hon'ble Supreme Court in **Amardeep Singh's case (supra)** has held as under :

"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."

In the present case, when the parties have already stated on oath through affidavit that both of them are living separately since July, 2018, the court below has committed illegality in rejecting the application of the parties for waiving cooling-off six months' period in the absence of any documentary evidence.

Taking into consideration the overall facts and circumstances of the case, this writ petition is allowed. The impugned order dated 26.04.2022 passed by the court below rejecting the application filed on behalf of the parties for waiving cooling-off six months' period is hereby set aside and the statutory period of six months specified under Section 13-B(2) of the Act of 1955 is hereby waived.

The parties are directed to appear before the court below on 24.05.2022 and the court below is directed to pass decree of divorce in accordance with law.

Stay petition stands disposed of.

(VIJAY BISHNOI),J

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