

HIGH COURT OF MADHYA PRADESH; BENCH AT INDORE

W.P. No.23469/2017

Deepak Rahinj Vs. Smt. Varsha @ Kiran @ Rinki

Indore, dated 28.12.2017

Shir Praveen Pal, learned counsel for the petitioner.

Shri A.S. Rahtore, learned counsel for the respondent.

The petitioner and the respondent have jointly approached this Court by way of the present writ petition being aggrieved by order dated 15.12.2017 passed by First Additional Principal Judge, Family Court Indore, who has declined to reduce the six months of colling period.

The marriage between the petitioner and the respondent has solemnized on 16.05.2005 under the Hindu Rights and Ritual. After the marriage, two children namely Uday and Aishwarya were borned, who are at present 8 and 10 years old respectively. Due to certain unavoidable circumstances, they have started living separately and now by way of mutual consent, they filed an application under Section 13-B of Hindu Marriage Act for divorce by way of mutual consent.

That under Section 13-B of Hindu Marriage Act, there is a provision of six months colling period before grant of divorce and according to which before expiry of said period, divorce by mutual consent cannot be granted by family Court, therefore, the petitioner and respondent have jointly filed an application for reducing the colling period.

The learned family Court after considering the said application, rejected the same that after filing an application on 30.11.2017, one month has not been reduced and the proceedings under Order XXXIIA Rule 3 of C.P.C has not

been completed.

The similar issue came up before the Hon'ble Apex Court in case of *Amardeep Singh Vs. Haveen Kaur* reported at (2017) 8 SCC 746 in which the Apex Court after considering all the situations directed the family Court to satisfy himself and if case is made out to waive the statutory period under Section 13B (2), it can do so. The conditions as decided by the Apex Court in para-18 reads 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 XXXIIA 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.”

Today both the parties are present before this Court jointly submit that they have settled their disputes and differences and want divorce. Mediation and conciliation

held between them, has also been failed and waiving period will only prolong their agony, and therefore, their colling period liable to be reduced.

Hence, the impugned order dated 15.12.2017 is set aside. The matter is remitted back to the family Court to consider their application for divorce by way of mutual consent under Section 13B (2) of Hindu Marriage Act without waiting for expiry of colling period but subject to completing the procedure as prescribed under Section 23 (2) of Hindu Marriage Act, under Section 9 of Family Court Act and Order XXXIIA Rule 3 of C.P.C.

Both the parties are directed to appear before the family Court on **10th January 2018**.

Certified copy as per rules.

(Vivek Rusia)
Vacation Judge

Ravi Prakash

Digitally signed by Ravi Prakash
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