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

(349)

CR-879-2025

Date of decision: - 04.03.2025

Shiv Shankar

...Petitioner

Versus

Manisha Aneja @ Jaspreet Kaur

...Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Lupil Gupta, Advocate, for the petitioner.

Mr. Rahul, Advocate, for the respondent.

VIKAS BAHL, J. (ORAL)

1. Present civil revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 21.01.2025 passed by the Principal Judge, Family Court, Zira whereby the application filed by the petitioner as well as the respondent to waive off six months period for recording statement of second motion has been dismissed.

2. Learned counsel appearing for the petitioner/husband and the respondent/wife have jointly submitted that in the present case, a joint petition under Section 13-B of the Hindu Marriage Act was filed by the petitioner and the respondent. In the said petition, it was stated that the marriage between the parties had taken place on 28.11.2019 and since July, 2020, both the parties had been residing separately and there was absolute dead lock between the two parties as there were temperamental

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differences. It was further specifically stated that the respectables of both the sides tried their level best to arrive at a compromise but there was no hope between the parties to live together and thus, the parties have decided to take divorce and it was also stated that there is no issue between the parties and a lump sum maintenance amount had also been agreed, out of which, Rs.1,50,000/- was paid at the time first motion and the balance amount of Rs.3,00,000/- was to be paid at the time of second motion.

3. It is submitted that in support of the said averments, the separate statements of both the petitioner and the respondent have been recorded, which have been annexed as Annexures P-3 and P-2 respectively and in the said statements, it has been reiterated that there is no child born from the wedlock and due to temperamental differences, the parties are residing separately and there are no chances of rehabilitation. It is further submitted that since all the matters have been finally settled and the petitioner and the respondent have been residing separately since July, 2020, thus, the petitioner alongwith the respondent moved an application for preponing the case from 15.07.2025 to an early date so as the second motion statement could also be recorded and it was specifically stated in the same that there was no possibility of cohabitation between the parties but however the said application was dismissed vide order dated 21.01.2025. It is submitted that the said application be allowed and the Family Court be directed to record second motion statement. In support of the arguments, reliance has been placed



upon the judgment of the Hon'ble Supreme Court in the case titled as "*Amit Kumar vs. Suman Beniwal*" *Civil Appeal no.7650 of 2021 decided on 11.12.2021.*

4. This Court has heard the learned counsel for the parties and has perused the paper book.

5. Section 13-B of the Hindu Marriage Act, which provides for divorce by mutual consent, requires that before filing a petition under the said provision, the parties should be residing separately for a period of one year or more. The said condition is met in the present case inasmuch as it is the admitted case of the parties, which is apparent from the pleadings as well as the joint statement of the parties that they have been residing separately since July, 2020 and the petition was drafted on 14.01.2025 i.e. after a period of more than 4 years and 5 months of separation. The second condition which has been mentioned in Section 13B of the Hindu Marriage Act is that the second motion is to be made not earlier than six months after the date of the presentation of the petition and not later than 18 months after the said date.

6. The Hon'ble Supreme Court in the case of *Amit Kumar (supra)* had observed that the Hon'ble Supreme Court in the case of *Amardeep Singh vs. Harveen Kaur* reported as *(2017) 8 SCC 746* had observed that in case the Court was satisfied that a case was made out to waive the statutory period under Section 13B(2) of the Hindu Marriage Act, it could do so and there were certain factors which were required to be considered in the said regard. It was further observed that the statutory



waiting period of 6 months mentioned in Section 13B(2) of the Hindu Marriage Act was not mandatory but directory and it was open to the Court to exercise its discretion to waive the said requirement having regard to the facts and circumstances of the case. In the case of ***Amit Kumar (supra)*** where the parties were married for only 15 months and lived together for only 3 days, it was observed by the Hon'ble Supreme Court that the marriage was a nonstarter and that the parties had made efforts for reconciliation and that the parties were unwilling to live together as husband and wife and thus, no useful purpose would be served by making the parties wait and the delay would only prolong their agony and in view of the said facts and circumstances, the Hon'ble Supreme Court had allowed the appeal and set aside the order of the High Court as well as Family Court and while exercising its power under Article 142 of the Constitution of India, granted the appellant and respondent a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act by waiving off the statutory period of 6 months under Section 13B(2) of the said Act. The relevant portion of the said judgment is reproduced hereinbelow:-

*“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.

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28. *In this Case, as observed above, the parties are both well educated and highly placed government officers. They have been married for about 15 months. The marriage was a non-starter. Admittedly, the parties lived together only for three days, after which they have separated on account of irreconcilable differences. The parties have lived apart for the entire period of their marriage except three days. It is jointly stated by the parties that efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife. Even after over 14 months of separation, the parties still want to go ahead with the divorce. No useful purpose would be served by making the parties wait, except to prolong their agony.*

29. *The appeal is, therefore, allowed. The impugned order dated 17th November, 2021 passed by the High Court and the impugned order dated 12th October, 2021 passed by the Family Court, Hissar are set aside.”*

7. The facts of the present case are on a higher footing than the facts of the case before the Hon'ble Supreme Court in *Amit Kumar (supra)*, inasmuch as, in the present case, as is apparent from the pleadings and the joint statement, it is the admitted case of the parties that their marriage had taken place on 28.11.2019 and that since July, 2020, the petitioner and the respondent have been residing separately i.e. for the last more than 4 years. It is further not in dispute that there is no child born between the parties and there is a final statement with respect to the total amount of maintenance which was required to be paid i.e. Rs.4,50,000/-, out of which, an amount of Rs.1,50,000/- has already been



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paid and the balance amount of Rs.3,00,000/- is to be paid at the time of recording of second motion. It is also apparent that from the above-said pleadings and the joint statement that there is no possibility of rehabilitation and in spite of best efforts made by respectables of both the sides, there is no possibility of parties living together and that the marriage has irretrievably broken down due to temperamental differences. It is the common case of the parties that any further delay would further prolong their agony and in view of the above, even the conditions as have been cited in the case of *Amit Kumar (supra)* have also been met in the present case.

8. Keeping in view the above said facts and circumstances, the present petition is allowed and the order dated 21.01.2025 is set aside and the parties are permitted to move an application for preponing the case which is now listed for 15.07.2025 before the Family Court and on their doing so, the Family Court would prepone the main case and would give a date within 14 days of the moving of the said application for recording the statement of both the parties with respect to the second motion and in case the parties record the said statement in consonance with their pleadings and their earlier statement, then the Family Court would pass the necessary final order in the petition under Section 13B of the Hindu Marriage Act, in accordance with law.

March 04, 2025
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes