

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7326 OF 2017

Sanjay S. Sen .. Petitioner
vs.
Nicolette S. Sen .. Respondent

None for both sides.

CORAM : M. S. SONAK, J.
DATE : 08 DECEMBER 2017

P.C. :-

1] None for the petitioner.

2] The challenge in this petition is to the order dated 23rd May 2017, by which, the learned Family Court has refused to waive cooling-off period of six months for grant of divorce by mutual consent.

3] By now, it is possible that the six months period has elapsed and the parties have therefore, secured divorce by mutual consent. That is perhaps the reasons as to why neither the petitioner nor the respondent are present in the Court today.

4] Rather than dismiss this petition as infructuous, it will be appropriate to set aside the impugned order and remand the matter

to the Family Court at Bandra. This is because very recently, the Hon'ble Supreme Court, in case of *Amardeep Singh vs. Harveen Kaur – (2017) 8 SCC 746*, has ruled that the statutory period of six months as prescribed in Section 13-B(2) of the Hindu Marriage Act, 1955 is directory and not mandatory. Though, this is a case, to which the Special Marriage Act, 1954 applies, the principles laid down by the Hon'ble Supreme Court may possibly apply.

5] Accordingly, the impugned order is set aside. The matter is remanded to the Family Court for deciding the application for waiver or for disposing of the petition for divorce by mutual consent in accordance with law.

6] The Registry to forward and authenticated copy of this order to the Family Court at Bandra taking up Petition No. F-456 of 2017.

7] The petition is disposed of in the aforesaid terms.

(M. S. SONAK, J.)