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

+ CM(M) 126/2020

JASPREET SINGH LAMBA

..... Petitioner No. 1

Through: Mr.Praveen Suri and Ms.Lubhanshi
Sharma, Advs.

And

JASMINE KAUR & JASMINE ANAND Petitioner No. 2

Through:

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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03.02.2020

CM 4301/2020

Exemption allowed, subject to all just exceptions.

CM(M) 126/2020 & CM 4302/2020

1. This petition has been filed challenging the order dated 27.01.2020 passed by the learned Family Courts (HQs), District South-West, Dwarka, New Delhi dismissing the application of the parties seeking waiver of the statutory period of six months for grant of a Decree of Divorce on mutual consent under Section 13B(2) of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act').

2. The learned counsel for the petitioners, relying upon the judgment of the Supreme Court in *Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746, submits that the waiver of the waiting period for the second motion is to be considered by the learned Family Court also keeping in view that the waiting period may only prolong the agony of the parties with there being no

likelihood of reconciliation. The Supreme Court has further held that the period mentioned under Section 13B(2) of the Act is not mandatory but directory.

3. As far as the merits of the case is concerned, the learned counsel for the petitioners submits that the parties were married on 09.12.2016 and had been living separately since 14.11.2018. They are presently of young age and therefore want to move on with their lives. They have amicably settled their disputes and have decided to part ways through an amicable settlement.

4. I have considered the submissions made by the learned counsel for the petitioners. The Supreme Court in the above referred judgment, while considering the provision of Section 13B(2) of the Act, 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.

5. The condition that the statutory period of six months in addition to the statutory period of one year under Section 13B(1) of the Act having expired cannot be the sole criteria for determining whether the waiting period of six months can be waived by the learned Family Courts. The learned Family Courts is also to keep in consideration the other factors that would be relevant for determining this question including whether the parties have genuinely settled their differences and there is no chance of reconciliation between them; the age of the parties; children, if any from the wedlock; and other relevant considerations.

6. In the present case, as referred above, the parties are of young age and want to move on with their lives. To insist upon the waiting period to lapse would only add to their agony. I, therefore, find merit in the present petition. The Impugned Order dated 27.01.2020 is set aside. The petition of the parties under Section 13B(2) of the Act alongwith application shall stand revived.

7. The petition is disposed of in the above terms, with no order as to costs.

Dasti.

NAVIN CHAWLA, J

FEBRUARY 03, 2020/Arya