

**ANWESHA CHATTOPADHYAY VS.  
ANNADA PRASAD.**

**Mr. Debabrata Acharyya**  
**Mr. Prabir Adhya**  
**..for the petitioner**  
**Mr. Arindam Sen**  
**..for the opposite party**

This revisional application has been filed by the wife in MAT Suit No.1286 of 2019, pending before the learned District Judge, Alipore, South 24 Parganas.

The petitioner is aggrieved by the order dated December 15, 2020 on the ground that the learned Court below dismissed the Matrimonial Suit as the mandatory period prescribed under the statute for disposal of any application for divorce by mutual consent had expired.

It is contended that this order of dismissal by efflux of time is not a decree as such no appeal is maintainable. Reference is made under Section 39 of the Special Marriage Act, 1954.

The opposite party/husband is represented and it is submitted on behalf of the opposite party/husband that the Court was not within its

jurisdiction to dismiss the suit as the time fixed by the statute for disposal of such matters, expired during the pandemic situation when the Courts were not functioning properly. Notifications of the High Court to the District Courts regarding suspension of functioning has also been relied upon by the parties.

Reference is also made to the decision of Amardeep Singh Vs. Harveen Kaur, reported in 2017 SC 4417, in which it has been held that the period mentioned in Section 13-B(2) of the Hindu Marriage Act was not mandatory but directory and it would be open to the Court to exercise its discretion in the facts and circumstances of the each case where there was no possibility of the parties to resume cohabitation. The said provisions are *pari materia* with the provisions of Sections 28 of the Special Marriage Act.

Both the parties appear before this Court and are aggrieved by the dismissal of the suit, which is a suit for divorce by mutual consent on the ground of irretrievable break down of marriage.

This Court finds that the time period mentioned in the statute could not be adhered to by the learned Court below as the Courts were not functioning regularly during the pandemic period and the learned Court below had the discretion to extend such time keeping in mind the prevailing situation and the

notification of the Hon'ble High Court.

The learned Court below has acted illegally and with material irregularity in dismissing the suit. The suit is revived and the learned Court below shall proceed with the suit and dispose of the same in accordance with law. As the husband lives in Netherlands and international travel has been banned, the husband will be allowed to participate in the proceedings virtually. This court has not expressed any view with regard to the merits of the suit.

This revisional application is disposed of.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

*(Shampa Sarkar,J.)*



