

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9439 OF 2021**

Rohinton Minoo Surty	.. Petitioner
V/s	
Kashmira Rohinto Surty	.. Respondent

Ms. K.H. Rajani, for the Petitioner.

Ms. Shivani Jadhav, for the Respondent.

**CORAM: A. A. SAYED &
ABHAY AHUJA, JJ.**

DATE : 23rd DECEMBER, 2021.

P.C. :-

Learned Counsel for the parties have pointed out that a Petition has been filed in the Family Court seeking divorce under section 28 of the Special Marriage Act 1954. During the pendency of the Petition, the parties have arrived at Consent Terms for decree of divorce by mutual consent. They have also filed proceedings for divorce by mutual consent under the Parsi Marriage and Divorce Act 1936 in the Parsi Chief Matrimonial Court at Bombay. It is the contention of learned Counsel for the parties that the parties are living separately since 2018. Both are above 50 years of age and there are no children out the said wed-lock. It is pointed out that the

parties had made a joint Application in the Family Court seeking waiver of 6 months waiting period.

2. Learned Counsel for the Petitioner and learned Counsel for the Respondent state that both the parties are aggrieved by the order passed by the Family Court on the joint Application seeking waiver of 6 months waiting period. The said order read thus:

“Heard. Perused the Application, it is not supported by Affidavit. Admittedly, nothing to show hardship to parties. Application is rejected.”

3. Learned Counsel for the Petitioner has pointed out several judgments including the judgment of the Supreme Court in case of Amardeep Singh Vs. Harveen Kaur in Civil Appeal No. 11158 of 2017 (arising out of Special Leave Petition (Civil) No. 20184 of 2017) decided on 12th September 2017.

4. Having perused the impugned order, we find that the said order is cryptic and cannot be sustained. The learned Judge ought to have granted an opportunity to the parties to file the Affidavit, if it was necessary. The impugned order does not contain any reasons.

5. Hence, the impugned order of the Family Court is

set aside. The matter is remitted back to the Family Court to decide the Application a fresh. The Family Court shall decide the Application within a period of two weeks from the today.

6. The Writ Petition to stand disposed of in the aforesaid terms. We make it clear that we have not expressed any opinion on merits.

(ABHAY AHUJA, J.)

(A. A. SAYED, J.)