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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 22nd January, 2021

+ **CM(M) 663/2020**

SH. RISHABH JAIN

..... Petitioner

Through: Mr. Randhir Jain & Mr. Dhanajai
Jain, Advocates along with Petitioner
in person.

versus

SMT. NITAKSHI JAIN

..... Respondent

Through: Respondent in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. Mr. Rishabh Jain and Ms. Nitakshi Jain, the parties in the present matter were married on 28th November, 2019. It is their case that they could not live together even for a period of two months after their marriage and they started living separately since January, 2020 itself. Various efforts were made to reconcile their disputes with the intervention of family. However, the same failed.
3. A petition under Section 9 of the Hindu Marriage Act, 1955 (*hereinafter "HMA"*) for restitution of conjugal rights was also filed. However, the parties continued to live separately. Finally, with the intervention of friends and family, a memorandum of settlement was entered into by the parties on 27th June, 2020 by which all their disputes were resolved. The said settlement has been placed on record. It is signed by both the parties along with their parents. The said memorandum of settlement is signed by family members of both sides.

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4. Both the parties have appeared before this Court and they confirm that the memorandum of settlement has been entered into by them.

5. The parties after having arrived at the settlement, filed a joint petition under Articles 32 and 142 of the Constitution of India being W.P.(C) 736/2020. However, the Supreme Court did not entertain the petition and parties were given liberty to approach the Family Court. The order dated 11th August, 2020 passed by the Supreme Court reads as under:

“We are declining this petition filed under Article 32 read with Article 142 of the Constitution of India. The writ petition is dismissed. Liberty to move Family Court in accordance with law.”

6. The parties then approached the Principal Judge, Family Courts, (South-East), Saket, New Delhi on 5th September, 2020 under Section 13B of the HMA for a divorce by mutual consent. Along with the said petition, they also filed an application under Section 14 of the HMA for waiver of the period of one year of marriage which is required to have passed before filing a divorce petition under Section 14 of the HMA, along with a waiver of the period of 6 months before a second motion can be filed under Section 13B of the HMA. The said application was dismissed by Principal Judge, Family Courts, (South East), Saket, New Delhi on 24th September, 2020 on the ground that the period required as per law had not expired. The said order was assailed before this Court in CM(M) 572/2020 and vide order dated 17th November, 2020, the Id. Single Judge of this Court records as under:

“CM(M) 572/2020

This petition has been filed by the petitioner challenging the order dated 24.09.2020 passed by the learned Principal Judge, (South-East), Family

Court in HMA No.383/2020.

It is the case of the petitioner that the parties were married as per Hindu rights and ceremonies on 28.11.2019 and have been living separately since 10.05.2020. The parties are of a young age and wish to restart their lives. The parties have also arrived at an amicable settlement in this regard.

The respondent who appears in person and has been identified by the learned counsel for the petitioner, submits that there is no chance of rapprochement in the present case.

The learned counsel for the petitioner further submits that in any case, one year period would expire on 27.11.2020.

In view of the submissions made, the Impugned Order is set aside and the petition is restored back to its original number to be listed before the learned Family Court on 1st December, 2020.

The petition is disposed of in the above terms.

A copy of this order be supplied to the learned counsels for the petitioner and the respondent who appears in person, on their e-mail addresses provided.”

7. After the petition was restored, the parties appeared before the Principal Judge, (South-East), Family Courts, Saket. However, vide the impugned order dated 9th December, 2020, the matter was merely adjourned to 18th May, 2021 by observing that neither the one year period as under Section 14 of the HMA nor the six months' period as under Section 13B of the HMA could be waived in any manner whatsoever.

8. Mr. Randhir Jain, ld. counsel ld. counsel for the Petitioner relies upon the two judgments passed in ***Amardeep Singh v. Harveen Kaur, (2017) 8***

SCC 746 and Sonali Soni v. Ujjwal Sethi, [CM (M)262/2020, decided on 26th February, 2020] following the Supreme Court judgment. It is his submission that on the strength of these judgments, and the fact that the parties have been living separately for more than a year, the bar of one year no longer applies. In any event, he submits that even the six months' period can be waived in view of the observation in **Amardeep Singh (supra)** by the Supreme Court.

9. This Court has interacted with both the parties. The Respondent is 26 years of age and the Petitioner is 28 years of age. Both are educated and are duly employed. They submit that considering their age, they would like that the present marriage be dissolved immediately and a decree of divorce be granted in order to enable them to move forward with their respective lives. The Court is satisfied that the parties do not wish to live together any more. The marriage was solemnized in November, 2019 but the parties have been living separately for more than one year now. Considering this fact, the waiver of one year of separate living is no longer required to be granted inasmuch as the said period has already passed. Thus, this Court deems it appropriate to record that the first motion stands granted.

10. Insofar as the six months' period is concerned, in terms of the judgment in **Amardeep Singh (supra)**, the six months' period is held to be directory and not mandatory. This has also been followed by the Id. Single Judge in **Sonali Soni (supra)**.

11. Mr. Jain, Id. counsel submits that an application for waiver of the said period is pending before the Family Court. Accordingly, in view of the above facts and circumstances, the following directions are issued:

- i) The period of one year having already passed, the first motion

is hereby granted;

ii) The application for waiver of six months' period under Section 13B(2) of the HMA having been filed shall be considered by the Family Court and an appropriate order shall be passed within a period of one month from today, considering the judgements set out above.

12. The parties are permitted to appear before the Family Court on 1st February, 2021. On the said date, Family Court would consider the application for waiver of six months' period and pass appropriate orders.

13. The petition is disposed of in these terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 22, 2021

Rahul/Sp

