

Diksha Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11297 OF 2022

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MRS. PRANALI PRATHAMESH SHINGOTE ..PETITIONER

VS.

PRATHAMESH NITIN SHINGOTE ..RESPONDENT

Adv. Varsha Pichaya a/w. Adv. Sachin Padaye for the
petitioner.

Adv. Prajakta Deshpande for the respondent.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 28, 2022.

JUDGMENT :

1. Heard learned counsel.
2. The couple wants to be separated by a decree of Divorce by mutual consent. The application for waiving of the cooling period is rejected by the Family Court.
3. The present petition was kept by me for hearing at 5.30 p.m. today as the respondent-Prathamesh is presently residing in Canada and as he had agreed to appear through video conferencing. Learned counsel identified Prathamesh.
4. The petitioner-Pranali is personally present in the Court and is duly identified by her advocate.
5. I have interacted with Pranali and Prathamesh. They say that for more than a year there has been absolutely no

communication between them. They do not intend to reconcile their differences and did not even want to enter into a dialogue with each other. Pranali as well as Prathamesh submitted that they would now want to move on with their lives. The marriage was solemnized on 21/5/2021 at Thane. Pranali is a resident of Nashik whereas Prathamesh then resided in Thane. Immediately post marriage, the disputes started. This resulted in Pranali filing petition for divorce under Section 13(i-a) of the Hindu Marriage Act, 1955 (hereafter 'the said Act' for short). The petition was filed on 13/8/2021, just less than three months from the date of their marriage. Pranali and Prathamesh have been living separately since 25/7/2021 post the differences that arose in their matrimony. The marriage according to them has been a non starter and there is absolutely no emotional connect between them. They pleaded that any further attempt of reconciliation will only add to their agony. There is absolutely no possibility of reconciliation.

6. The Marriage Counsellor, before whom the counseling took place, submitted a report that she interviewed Pranali in person and Prathamesh was interviewed through video conference. In her report dated 22/8/2022, it is recorded by the Marriage Counsellor, that both the parties have agreed to convert the said petition into mutual consent divorce petition. The consent terms dated 22/8/2022 are attached with the said report of the Marriage Counsellor. Pranali and

the Power of Attorney holder of Prathamesh, made an application on 22/8/2022 for conversion of the petition under Section 13 (i-a) to the one under Section 13B of the said Act. In the application, it is stated that the matter has been resolved and both the parties have agreed to settle the matter through mutual consent, hence it is prayed that conversion from Section 13(i-a) to Section 13B of the said Act may kindly be allowed.

7. Necessary application for amendment came to be made before the Family Court. The petition came to be converted into the one under Section 13B of the said Act. It was prayed that a decree of divorce dissolving the marriage solemnized on 21/5/2021 between Pranali and Prathamesh under the provisions of the said Act be passed. It was further prayed that the consent terms be made part of the decree.

8. The parties filed an application for waiver of the statutory cooling period. Apart from the material facts, the grounds for waiver are stated in the said application, which reads thus: -

“ii) **GROUND FOR WAIVER**

a) Factors to be considered -

- 1) Length of time of marriage – 15 months.
- 2) Parties stayed together for – 2 months.
- 3) Length of time of separation – 13 months.

- 4) Length of time of litigation of pending – 13 months.
- 5) Other proceedings – Nil.
- 6) Child from marriage – Nil.
- 7) Both parties have arrived at settlement out of their own free will.
- b) Both the parties are highly educated petitioner No.1 is B.tech (Mechanical Engineering) and petitioner No.2 has a MBA degree from USA.
- c) If the cooling period is not waived both the parties shall face additional hardship as petitioner No.1 has received a marriage proposal and the marriage has to happen in September month due to restrictions of visa issues and dates of marriage suitable to them. Both the petitioners want to move ahead in life and shall be losing precious years. No useful purpose would be served by making the parties wait except to prolong their agony.
- d) The young age of both the petitioner should also be considered."

9. The Family Court vide order dated 13/9/2022 was of the view that after conversion of the said petition, there is

nothing on record, except the affidavits filed by Pranali to show that there was an attempt of mediation/ counselling and the mediator/counsellor's report that there are no chances of mediation or counselling between the parties. In the opinion of the Family Court Judge, one of the condition, that there was an attempt of mediation/counselling after conversion of the said petition, as laid down by the Hon'ble Apex Court in the matter of **Amardeep Singh vs. Harveen Kaur**¹ itself has not been fulfilled and therefore, the learned Family Court Judge was of the opinion that no case is made out of waiver of statutory period of six months. The application below Exhibit 22 came to be rejected.

10. While assailing the impugned order passed by the Family Court, learned counsel for the parties have relied upon the decision of the Supreme Court in **Amit Kumar vs. Suman Beniwal**². It would be material to refer to the relevant portions of the decision where Their Lordships have discussed the object of Section 13B(2) of the said Act. Paragraphs 16, 17, 18, 19, 20 and 21 read thus:-

"16. Section 13B incorporated in the Hindu Marriage Act with effect from 27.5.1976, which provides for divorce by mutual consent, is not intended to weaken the institution of marriage. Section 13B puts an end to collusive divorce proceedings between spouses, often undefended, but time consuming by reason of a rigmarole of procedures. Section 13B also enables the parties to a marriage to avoid and/or shorten unnecessary acrimonious litigation,

1 2017 SAR (Civil) 1120

2 C.A.No. 7650/2021 decided on 11/12/2021.

where the marriage may have irretrievably broken down and both the spouses may have mutually decided to part. But for [Section 13B](#), the defendant spouse would often be constrained to defend the litigation, not to save the marriage, but only to refute prejudicial allegations, which if accepted by Court, might adversely affect the defendant spouse.

17. Legislature has, in its wisdom, enacted Section 13B (2) of the Hindu Marriage Act to provide for a cooling period of six months from the date of filing of the divorce petition under Section 13B(1), in case the parties should change their mind and resolve their differences. After six months if the parties still wish to go ahead with the divorce, and make a motion, the Court has to grant a decree of divorce declaring the marriage dissolved with effect from the date of the decree, after making such enquiries as it considers fit.

18. The object of Section 13B(2) read with Section 14 is to save the institution of marriage, by preventing hasty dissolution of marriage. It is often said that "time is the best healer". With passage of time, tempers cool down and anger dissipates. The waiting period gives the spouses time to forgive and forget. If the spouses have children, they may, after some time, think of the consequences of divorce on their children, and reconsider their decision to separate. Even otherwise, the cooling period gives the couple time to ponder and reflect and take a considered decision as to whether they should really put an end to the marriage for all time to come.

19. Where there is a chance of reconciliation, however slight, the cooling period of six months from the date of filing of the divorce petition should be enforced. However, if there is no possibility of reconciliation, it would be meaningless to prolong the agony of the parties to the marriage. Thus, if the marriage has broken down irretrievably, the spouses have been living apart for a long time, but not been

able to reconcile their differences and have mutually decided to part, it is better to end the marriage, to enable both the spouses to move on with the life.

20. In *Amardeep Singh Vs. Harveen Kaur*, relied upon by the Family Court and the High Court, this Court held: 1 (2017) 8 SCC 746

“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 13B (2), it can do so after considering the following:

(i) The statutory period of six months specified in Section 13B (2), in addition to the statutory period of one year under Section 13B (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 32A 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 13B(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.”

21. The factors mentioned in Amardeep Singh v. Harveen Kaur (supra), in Paragraph 19 are illustrative and not exhaustive. These are factors which the Court is obliged to take note of. If all the four conditions mentioned above are fulfilled, the Court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13B (2) of the Marriage Act.”

11. In my opinion, applying the law laid down by the Supreme Court to the facts of the present case, the petition deserves to be allowed. It needs to be considered that the parties hardly two months into matrimony are residing separately since 25/7/2021. Having resided together for just over two months, during which period, there were differences of such nature that they started residing separately, so much so, that they did not even once during this period made an attempt to interact with each other. The parties have not met each other or spoken to each other for more than a year since filing of the petition. As indicated earlier, I have interacted with Pranali personally and with Prathamesh through video conferencing. Both parties requested that they may be permitted to move on with life and that they would like to put an end to the marriage. There are no issues out of the said marriage. Reconciliation, as I find from the submissions of learned counsel for the parties, as well as upon interaction with Pranali and

Prathamesh, is not possible. Even the Marriage Counsellor's report though prior to the conversion petition, says so. The Marriage Counsellor tried for an amicable settlement but to no avail. These are sufficient indicators to form an opinion that there is no possibility of reconciliation and that there is an absolute irretrievable breakdown of marriage. Unfortunately the marriage was a non starter and did not take off even to a slight extent where then there could be a faint hope of reconciliation. The waiting period hereafter will only prolong their agony.

12. Pranali and Prathamesh have agreed for a divorce on the terms which are mentioned in the consent terms. The parties withdraw all allegations against each other. I am more than satisfied in the present case that insisting the parties to go through the rigmarole of fulfilling the condition of making every possible attempt to save the marriage, the object though laudable, will only be an exercise of futility. It would just be an attempt of going through the rituals of empty formalities. Let the estranged couple move on with life as is their wish. In my opinion, this is a fit case where the prayer for cooling period deserves to be allowed.

13. The impugned order passed by the Family Court is therefore set aside. The cooling of period is waived.

14. The petition is allowed in terms of prayer clauses (b) and (c).

15. Pranali and Prathamesh (through video conference)

undertake to appear before the Family Court at Nashik, on 3/10/2022 along with the copy of this order.

16. Learned counsel requested that the Family Court Judge be directed to immediately pass orders on the petition as the consent terms are already on record. I have no manner of doubt that subject to time constraints, the petition will be dealt with expeditiously.

17. The writ petition is allowed with no order as to costs.

(M.S.KARNIK, J.)