

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 2014 of 2022

(1) Ashish Mahadeo Virulkar,
aged : 37 years, Occupation : Business,
residing at : Plot No. 306,
Manewada Besa Road,
Near Hanuman Mandir,
Shri Krishna Nagar, Nagpur,
Maharashtra, 4400 34.

(2) Sima Ashish Virulkar,
maiden name : Sima Suresh Jahakar,
aged : 29 years, Occupation : Household,
residing at Shivaji Chowk, Morshi,
Taluka : Morshi, District : Amravati.

.... Petitioners

.. Versus ..

Nil

.... Respondent

Mr. R. D. Dhande, Advocate for the petitioners
Ms. T. H. Khan, Amicus Curiae

CORAM : ROHIT B. DEO, J.
DATED : 22-4-2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with consent of the learned counsel appearing for the parties.

2. Mr. 'A' and Mrs. 'S' who are legally wedded husband and wife are jointly assailing the order dated 30-3-2022 rendered by Family

Court 3, Nagpur whereby the joint application under Section 13B of the Hindu Marriage Act, 1955 (Act) seeking waiver of the cooling period of six months is rejected.

3. The petitioners married on 16-2-2021. The common submission is that the petitioners resided together for less than one month, during which period, the marriage was not consummated. In order to have a dignified parting and put a quietus to the irreconcilable differences, the petitioners agreed to dissolve their marriage. The petitioners further agreed on the terms of the settlement, in which I need not delve deeper.

4. The petitioners preferred an application seeking exemption of waiver of the period of one year prescribed in Section 13B(1) of the Act. The Family Court waived the period of one year vide order dated 30-12-2021 and directed registration of the petition for mutual divorce.

5. The petitioners then moved a joint motion for waiver of the period of six months prescribed in sub-section (2) of Section 13B of the Act which the Family Court has rejected by the order impugned.

6. The Family Court has referred to the decision of the Supreme Court in ***Amardeep Singh Vs. Harveen Kaur (2017 SCC On Line SC 1073)***

and reasoning that the first condition stipulated in the said decision is not satisfied, rejected the application. The relevant observations of the Family Court reads thus :

“7] The first condition laid down in the Judgment of Amardeep Sing Supra it is clear that prior to filing the petition for mutual consent divorce, the parties have been observed statutory period of one year and in addition they have to observe the cooling period of six months laid down in Section 13-B(2) of HMA. If the above period is already observed court can use discretion.”

7. The learned Amicus, Ms. Khan has invited my attention to the recent judgment of the Supreme Court in ***Civil Appeal No. 7650 of 2021 (Amit Kumar Vs. Suman Beniwal) dated 11-12-2021*** in which ***Amardeep Singh*** (supra) is duly considered. In ***Amit Kumar***, the Supreme Court observed thus :

“22. The Family Court, as well as the High Court, have misconstrued the judgment of this Court in *Amardeep Singh v. Harveen Kaur* (supra) and proceeded on the basis that this Court has held that the conditions specified in paragraph 19 of the said judgment, quoted hereinabove, are mandatory and that the statutory waiting period of six months under Section 13B(2) can only be waived if all the aforesaid conditions are fulfilled, including in particular, the condition of separation of at least one and half year before making the motion for decree of divorce.

23. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. A judgment is not to be read in the manner of a statute and construed with pedantic rigidity. In *Amardeep Singh vs. Harveen Kaur* (supra), this

Court held that the statutory waiting period of at least six months mentioned in Section 13B (2) of the Hindu Marriage Act was not mandatory but directory and that it would be open to the Court to exercise its discretion to waive the requirement of Section 13B(2), having regard to the facts and circumstances of the case, if there was no possibility of reconciliation between spouses, and the waiting period would serve no purpose except to prolong their agony.”

8. **Amit Kumar** as such articulates that the conditions which are referred in **Amardeep Singh** are neither mandatory nor constitute a straitjacket formula. The discretion to waive the cooling period would have to be exercised on the basis of individual facts and circumstances and that if there is no possibility of reconciliation at all, the cooling period may be a ritualistic formality which shall do no good to the parties and indeed, would only prolong the agony.

9. In the present case, the husband and wife are young and intend to move on in life after having a dignified parting. The possibility of reconciliation is ruled out by both. In such a situation, insisting that the husband and wife must wait for a further period of six months after the registration of the petition shall operate oppressively.

10. I am satisfied that a case is made out for waiver of six months cooling period.

11. The order impugned is set aside and the period of six months stipulated in Section 13B(2) is waived.

12. The petition is disposed of in the aforestated terms.

13. The Court places on record the appreciation for the assistance rendered by the learned Amicus, Ms. Khan.

JUDGE

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