

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3146 OF 2022
Manjiri w/o Bhushan Raut and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. H.V.Thakur, Advocate for petitioners.

CORAM : MANISH PITALE J.
DATE : 10/06/2022

Heard Mr. Thakur, learned counsel for the petitioners. This is a joint petition filed by the petitioners and there is no respondent herein, as the petition challenges an order dated 12/04/2022 passed by the Family Court No.2, Nagpur, whereby an application at Exh.7, for waiving of statutory period under Section 13-B(2) of the Hindu Marriage Act, 1955, has been rejected.

2. The petitioners got married on 24/05/2020. But, due to irreconcilable differences between them, in November 2020, they separated from each other. It appears that both the petitioners desired to move on in life and accordingly on 28/03/2022, they filed a petition for divorce by mutual consent under Section

13-B of the aforesaid Act. As per Section 13-B(2) of the said Act, there has to be a statutory cooling of period of six months before the second motion can be moved for grant of divorce by mutual consent.

3. On 12/04/2022, the petitioners moved the aforesaid application at Exh.7 for waiving the statutory period of six months. It was stated in the said application that both the petitioners being well educated and very clear about the fact that they wanted to move on in life, they desired that the cooling of period of six months be waived, so that decree of divorce by mutual consent may be passed in the petition, which was already filed before the Family Court.

4. When the application for waiver came up for consideration, the learned counsel appearing for the petitioners relied upon the judgments of the Hon'ble Supreme Court in this context. The said judgments were referred to, but after recording the chronology of events in the present case, the Family Court concluded that it would not be appropriate to grant the application as the petitioners may later regret, what the Family Court termed as a hasty decision.

On this basis, the application was rejected by the impugned order dated 12/04/2022.

5. Both the petitioners have jointly filed the present writ petition. The learned counsel for the petitioners referred to judgments of the Supreme Court in the case of *Amardeep Singh vs. Harveen Kaur (2017) 8 SCC 746* and *Amitkumar vs. Suman Beniwal, 2021 SCC OnLine SC 1270*, to contend that the law laid down therein and the parameters specified by the Supreme Court clearly covered the present case in favour of the petitioners and that the Family Court ought to have allowed the application for grant of waiver.

6. This Court has considered the aforesaid judgments. In the case of *Amardeep Singh* (supra) the question for consideration before the Supreme Court was recorded in paragraph 12 of the said judgment as follows:

“12. Accordingly, vide order dated 18/08/2017, we passed the following order :

“List the matter on 23/08/2017 to consider the question whether provision of Section 13-B of the Hindu Marriage Act, 1955 laying down cooling-off period of six months is a mandatory requirement or it is open to the Family Court to

waive the same having regard to the interest of justice in an individual case. Mr.K.V.Viswanathan, Senior Counsel is appointed as Amicus to assist the Court. Registry to furnish copy of necessary papers to learned Amicus.”

7. After giving due consideration to the issue involved, the Supreme Court held in the said judgment held as follows: -

“16. We have given due consideration to the issue involved. Under the traditional Hindu Law, as it stood prior to the statutory law on the point, marriage is a sacrament and cannot be dissolved by consent. The Act enabled the court to dissolve marriage on statutory grounds. By way of amendment in the year 1976, the concept of divorce by mutual consent was introduced. However, Section 13-B(2) contains a bar to divorce being granted before six months of time elapsing after filing of the divorce petition by mutual consent. The said period was laid down to enable the parties to have a rethink so that the court grants divorce by mutual consent only if there is no chance for reconciliation.

17. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling-off the period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not

to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.

18.

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

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

20. *Since we are of the view that the period mentioned in Section 13-B(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.”*

8. In the subsequent decision in the case of *Amitkumar* (supra) the Supreme Court held as follows: -

“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.”*

9. After quoting relevant portion from the earlier judgment in the case of *Amit Kumar* (supra), the Supreme Court went on hold as follows:

“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 13-B(2) of the Marriage Act.

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 13-B(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. to 26.

27. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13-B(2) of the Hindu Marriage Act, the Court would consider the following amongst other factors :-

- (i) the length of time for which the parties had been married;***
- (ii) how long the parties had stayed together as husband and wife;***

(iii) the length of time the parties had been staying apart;

(iv) the length of time for which the litigation had been pending;

(v) whether there were any other proceedings between the parties;

(vi) whether there was any possibility of reconciliation;

(vii) whether there were any children born out of the wedlock;

(viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.”

10. The aforesaid position of law laid down by the Supreme Court makes it clear that the Family Court can exercise power for waiving the statutory cooling of period of six months under Section 13-B(2) of the said Act, depending upon the facts and circumstances of each case. A perusal of the above quoted portions of the judgments of the Supreme Court would show that no straight jacket formula is laid down therein but, certain factors have been indicated, with emphasis being placed on there being no possibility of the parties resuming cohabitation and there being chances of alternative rehabilitation of the parties.

11. In the present case, both the parties are well educated. The petitioner No.1 (wife) is an Arts Graduate working as a receptionist in a hospital. Petitioner No.2 (husband) husband is an Engineering graduate, working in a software company at Nagpur. Both the parties have consciously stated in their petition for grant of divorce by mutual consent, as well as the application for grant of waiver of the statutory period, that there is no possibility of their co-habitation in view of their irreconcilable differences and further that the parties wish to be rehabilitated in their respective lives. It is also stated in the application for grant of waiver of the statutory period that after the petition for grant of divorce by mutual consent was filed, attempts at meditation through counselor were made, but, they met with failure.

12. It is further stated on behalf of the petitioner No.1 that there is a proposal for marriage, which may fructify in the near future so that the petitioner No.1 is rehabilitated but, it would be unnecessarily delayed if the statutory period is not waived.

13. A perusal of the impugned order passed by the Family Court shows that while the said Court has

referred to the relevant judgments of the Supreme Court, on facts, the Family Court appears to be apprehensive that the parties are acting in a hurry and this may be a situation where a hasty decision would be later regretted by the parties. There is also an observation made that this is the only case filed and pending between the parties and that there are no other cases between the parties pending for more than six months.

14. This Court is of the opinion that the aforesaid observations made by the Family Court are not sustainable. Nowhere is it stated in the aforementioned judgments of the Supreme Court that any case has to be pending between the parties for more than six months for an application for waiver to be moved. In fact, in the subsequent judgment in the case of *Amit Kumar (supra)*, it has been clarified by the Supreme Court that the conditions referred to in paragraph 19 in the case of *Amardeep Singh (supra)* cannot be said to be mandatory and that the application for grant of waiver of statutory period has to be considered in the facts and circumstances of each individual case. This Court is convinced that the petitioners indeed made

out a case for grant of such waiver and the application at Exhibit 7 ought to have been allowed.

15. In view of the above, the writ petition is allowed and the impugned order passed by the Family Court is set aside. The application for grant of waiver of statutory period at Exhibit 7 filed by the petitioners is allowed in terms of the prayer made therein.

16. The Family Court shall now proceed expeditiously, in accordance with law and dispose of the petition filed by the petitioners, preferably within a period of three weeks from today.

JUDGE