

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

WRIT PETITION NO. 7468/2022

1. Mrs. Pooja Bharat Chandak,
 (Maiden Name: Ku. Pooja Balkishan
 Rathi), aged about 27 years, Occu: Nil,
 R/o Flat No. C-2, 2nd Floor, Achraj
 Tower-1, Chaoni, Sadar,
 Nagpur-440013, Mob. No. 8552066664.

2. Shri Bharat Mahesh Chandak,
 Aged about 27 Years, Occu: Business,
 R/o Flat No. 209, Subhavastu Residency
 Narsingpur Road, Chhindwada,
 Madhya Pradesh. Mob. 9479488519,
 7999070548.

... **PETITIONERS/**
ORIGINAL APPLICANT.

VERSUS

NIL

... **RESPONDENT**

Mr. S.M. Bhangde, Counsel for Petitioners.
 Mr . K.L. Dharmadhikari, *amicus curia*.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **20.12.2022.**

ORAL JUDGMENT :

1. Heard.

2. **Rule.** Rule is made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The challenge in this writ petition is to the order dated 08/09/2022 passed by the learned Family Court No. 2, Nagpur declining to waive the statutory period of six months, as contemplated under Section 13B (2) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955').

4. The facts of the case can be stated briefly that both petitioners got married on 20/06/2021, as per Hindu Customary Rights, and later on, marriage was registered. Since inception, the couple was unable to match with each other. They realized that their liking, thinking, and temperament are diametrically opposite and thus, it is difficult for them to live together. In order to have dignified parting, they decided to separate, and accordingly, started to live separately from 18/07/2021. Though they stayed separately for the period of one year, despite efforts of settlement through the mediation of parents and relatives, it has not yielded.

5. Therefore, the petitioners have applied to the Family Court for divorce in terms of Section 13B of the Act of 1955. They preferred

an application (Exhibit-6) seeking waiver of the statutory period in terms of Section 13B(2) of the Act of 1955. However, the Family Court declined to exercise its discretion.

6. Both the petitioners are personally present before the Court. It was informed that petitioner No.1-Wife is Architect whilst petitioner No.2-Husband is holding Bachelor's Degree in Engineering. Both are educated and well matured. On inquiring, the cause of separation they have stated that they want to move on further in life by choosing partners of their choice.

7. It reveals that, within one month of the marriage, they separated and virtually the marriage was short lived. The parties have lived apart for the period of more than one year, proceeding to the filing of the application for divorce by mutual consent. It is informed that, all the efforts of reconciliation have failed. Both are unwilling to live together as Husband and Wife, due to persistent differences. Even after, a period of more than one year of separation, the mental status remained static.

8. The learned *amicus curia* Shri K. L. Dharmadhikari would submit that the learned trial Court has rightly performed its duty, as

contemplated under Section 23(2) of the Act of 1955. It is the submission that normally the Court shall follow the statutory mandate unless exception has been carried out.

9. The petitioner's learned counsel relied on the decision of the Hon'ble Supreme Court of India in ***Civil Appeal No. 7650 of 2021 (Amit Kumar Vs Suman Beniwal)*** dated 11/12/2021 to contend that the statutory mandate is discretionary one and the Court has to exercise its discretion based on individual facts and circumstances of the case. The mutual proceeding was filed on 22/08/2022, as well as the application for waiver was filed on the same date. Section 13B (2) of the Act of 1955 intends of the act that six months cooling period has to be observed for the hope of reunion and the Court shall make endeavor to that regard.

10. It reveals that the period of more than four months has been lapsed from taking out the application for waiver, but still the parties are firm on their decision of separation. No useful purpose would be served by making the parties to wait further, as they had certain plans for their life. Both the parties are young and they had no issues. The possibility of reconciliation is ruled out by them.

11. In view of that, I am satisfied that the case is made out for a waiver of six months cooling period. The impugned order dated 08/09/2022 is set aside and the period of six months stipulated in Section 13B (2) of the Act of 1955 is hereby waived.

12. The parties shall appear before the Family Court, Nagpur on 23/12/2022, on which the Family Court shall pass appropriate orders in accordance with law. The writ petition is **disposed of** in the aforesaid terms.

(VINAY JOSHI, J.)