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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10715 OF 2023

Prerana Sanjay Mali

PETITIONER

VERSUS

Shubham Prabhakar Jadhav

RESPONDENT

Mr. Jitendra V. Patil, Advocate for the petitioner

Mr. A. D. Chapule h/f Mr. Bhushan S. Dhawale, Advocate for
respondent

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 29th AUGUST, 2023

ORDER :

1. The petitioner – wife and respondent – husband have filed Marriage Petition No. 194 of 2023 under section 13 (B) of the Hindu Marriage Act for divorce by mutual consent, contending that their marriage took place on 22nd February, 2022 and they resided together till 1st March, 2022. Thereafter differences developed between them and they decided to part ways. They have settled their matrimonial dispute, by entering into a compromise, which is reflected in the marriage petition memo. They, therefore, prayed that they may be granted divorce by mutual consent.

2. In the said petition application Exhibit-6 is filed seeking waiver of 6 months' cooling of period. Said application is rejected by the Trial Court. Hence, the present petition.
3. Heard learned advocate for the petitioner and the learned advocate for the respondent. Perused the memo of petition, annexures and the impugned order.
4. The Apex Court in **"Amardeep Singh V/s Harveen Kaur"** (2017) 8 SCC 746 has held -

"16. 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 cooling of 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. 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 XXXIIA Rule 3 Code of Civil Procedure / 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.

21. 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.”

5. This Court in **"Pritam Vijaykumar Dargad V/s Sujata Pritam Dargad" 2022 1 Mh.L.J. 631** has followed the ratio in **"Amardeep Singh"** (*supra*) and allowed application filed by the parties therein, for waiver of cooling of period.

6. Coming to the facts of the present case, taking into consideration the fact that the parties have decided to part their ways and there is no possibility of their reunion, in view of the compromise arrived at between them, this is a fit case to exercise discretion for waiving the cooling of period.

7. In the result, following order-

ORDER

- A. Writ petition is allowed.
- B. Impugned order dated 5th August, 2023 passed by learned Joint Civil Judge, Senior Division, Jalgaon below Exhibit-6 in HMP No. 194 of 2023 is hereby quashed and set aside.
- C. Application Exhibit-6 is allowed.

[NITIN B. SURYAWANSHI]
JUDGE