

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

WRIT PETITION NO.7865 OF 2023

Mr. A Petitioners

Vs.

Mrs. B Respondent

Mr. Siddharth R. Ronghe for the Petitioners.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 30th JUNE 2023.

P. C.

1. This is the joint petition filed by the petitioners seeking to challenge the order dated 13/6/2023 passed by the Family Court, Pune rejecting the petitioner's joint application to waive the statutory period of 6 months as contemplated under section 13-B(2) of Hindu Marriage Act, 1955.

2. The facts herein are not in dispute. Petitioner No.1 and Petitioner No.2 were married on 21/4/2017 as per the Hindu Marriage Act, 1955 at Pune. Petition bearing PF No.737/2023 was filed under section 13-B of the Hindu Marriage Act, 1955 seeking

dissolution of the marriage by mutual consent. It is the case in the petition that the petitioner-wife has left matrimonial house on 10/2/2021 and had never returned to the matrimonial house. Thereafter all efforts for reconciliation have failed and as such there is no remote possibility of them reuniting. In view of the above, in the petition, application came to be moved on 31/5/2023 seeking waiver of statutory period of six months. The undisputed position is that there is no issue from the said wedlock. Application for waiving of the cooling off period was sought on the ground of there being no possibility of reconciliation between the parties and also that petitioner No.2 was granted visa on 8/2/2023 for shifting to USA and by reason of the present proceeding she is unable to shift to USA. The Family Court upon consideration of the application hold that the petitioner has not made out sufficient/reasonable ground in light of observation of the Apex Court in case of *Amardeep Singh vs. Harveen Kaur (2017) 8 SCC 746* and as such rejected the application leading to filing of the present petition.

2. Mr. Ronghe appearing for the petitioner has referred to

the decision of the Apex Court in the case of *Amardeep Singh (supra)* and the subsequent decisions of the Apex Court in the case of *Amit Kumar vs. Suman Beniwal decided on 11/12/2021 in Civil Appeal No.7650/2021*. He would urge that the decisions of the Apex Court is squarely applicable to the facts of the present case and has pointed out the observations of the Apex Court in the case of *Amit Kumar (supra)* where it is held that factors mentioned in *Amardeep Singh (supra)*, in paragraph 19 are illustrative and not exhaustive. He would further submit that the guidelines which have been laid down in paragraph No.27 of the decision of the Apex Court in the case of *Amit Kumar (supra)* are squarely applicable to the facts of the present case. Considering that there was no possibility of reconciliation, the parties had voluntarily arrived at genuine settlement and that since 2022 the parties were residing separately. He would therefore urge that cooling off period be waived and the Family Court be directed to proceed expeditiously. He has also pointed out decision of this Court in the case of *Manjiri w/o Bhushan Raut and Anr. passed on 10/6/2022 in Writ Petition No.3146/2022* wherein this Court after considering the decision of the Apex Court held that nowhere it is

stated in the aforesaid judgments of the Apex Court that any case has to be pending between the parties for more than 6 months, for an application for waiver to be moved. Applying the law which has been laid down by the Apex Court as well as decision of this Court in the case *Manjiri (supra)* in my opinion the facts of the case warrant waiver of the cooling off period. It is not disputed that there are no chances of any reconciliation particularly considering the fact that petitioner No.2 has decided to shift to USA. The marriage of the parties was performed in the year 2017 and they had been residing separately till 16/2/2022 and there are no issues from the said wedlock. As such the petitioners have made out a case for grant of waiver of the statutory period.

3. In view of the above, the writ petition is allowed and the impugned order dated 13/6/2023 passed by the learned Judge, Family Court below Exhibit 8 in PF No.737 of 2023 is hereby quashed and set aside. On setting aside of the order of the Family Court, application Exhibit 8 filed by the petitioner stands allowed. Family Court is directed to proceed expeditiously in accordance with law and dispose of the petition within a period of 4 weeks

from today.

4. Writ petition stands disposed of.

5. Request is made that the names of the petitioners be masked to protect their identity, which is granted. Petitioners are permitted to amend the cause title to mask the names of the petitioners and appropriate amendment be carried out forthwith.

SHARMILA U. DESHMUKH, J.