

Nikita

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

WRIT PETITION NO.12084 OF 2023

Neelasha Prashant More Alias Kshama
Sitaram Mhatre

... Petitioner

V/s.

Prashant Vinayak More

... Respondent

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Ms. Mehak Bookwala i/b Mr. Suraj Kaushik for the
Petitioner.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 6, 2023

P.C.:

1. The petitioner is challenging order passed by Family Court referring parties to a Conciliator. According to the petitioner, marriage is irretrievably broken. There are no chances of conciliation. The parties have signed the consent terms for divorce and, therefore, no purpose would be served by referring the parties to the conciliation or mediation. According to the petitioner, therefore, without completion of mandatory period, the petitioner is entitled to decree of divorce.

2. The Apex Court in the case of **Amardeep Singh v. Harveen Kaur**, reported in (2017) 8 SCC 746 in paragraph No.19 and 20, held as under:

“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.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the Court concerned.

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.”

3. The said judgment is thereafter followed by the Apex Court

in the case of **Amit Kumar Vs. Suman Beniwal** reported in 2021 SCC OnLine SC 1270 in paragraph No.22, the Apex Court has held as under:

“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 until 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.”

4. Considering the ratios laid down by the Apex Court, it is clear that unless conditions in paragraph No.19, are fulfilled. The Court has no power to waive the period of six months.
5. Once the conditions in paragraph No.19, are fulfilled, it will be open for the Family Court to pass order in accordance with law in terms of paragraph No.22, in the case of **Amit Kumar (supra)**.
6. The writ petition stands disposed of with above clarification.

(AMIT BORKAR, J.)