



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13491 OF 2023

Subhra Suchandan Datta

... Petitioner.

Versus

Mrs. Mohua Datta

... Respondent.

Mr. Vishwanath Patil i/by Mr. Ashwin Hawelkar for the Petitioner.
Mr. Datta Mane for the Respondent.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : November 08, 2023.

P. C. :

1. Heard.
2. The Petitioner is aggrieved by the order dated 21st September, 2023, passed by the District Judge-1, Panvel, on the joint application filed by the Petitioner and Respondent for taking the Petition on board, to enable the parties to file an application to waive the cooling off period.
3. Learned counsel for the Petitioner submits that in view of the decision of the Apex Court in the case of ***Amardeep vs. Harveen Kaur, reported in 2017 (8) SCC 746***, the parties, were desirous to move an application seeking waiver of statutory period provided under Section 28 of the Special Marriage Act. He would submit that

however, the learned District Judge has not permitted the filing of the application on the ground that already on 21st August, 2023, the order directing the parties to observe the six months cooling off period was passed.

4. Learned counsel appearing for the Respondent submits that even the Respondent seeks to join the Petitioner in that application for waiver of the cooling off period.

5. By the impugned order dated 21st September, 2023, the application of the parties for the purpose of taking the matter on board, to enable the parties to file the application for waiver of cooling off period was rejected. It appears that the matter has now been listed on 21st February, 2024. On 21st August, 2023, the learned District Judge in the absence of the parties and their Advocates had verified the petition for divorce which was presented under Section 28 of the Special Marriage Act and directed the parties to observe six months cooling off period.

6. At that time, there was no application filed for waiving of the cooling off period and as such, the order of 21st August, 2023 cannot be said to be an order passed on the application moved by the parties to waive of the cooling off period, so as to operate as *res*

judicata as is sought to be observed by the impugned order.

7. In view of the above, the impugned order dated 21st September, 2023 is quashed and set aside. Learned District Judge-1, Panvel is directed to permit the parties to take the matter on board for the purpose of filing of the application for waiving of the cooling off period. If such an application is filed, the leaned District Judge to consider the same in light of the decision of the Apex Court in ***Amardeep vs. Harveen Kaur*** (supra), and pass order in accordance with law.

8. Writ Petition stands allowed in the above terms.

(Sharmila U. Deshmukh, J.)