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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 09.01.2024+ **MAT.APP.(F.C.) 352/2023**

ABHISHEK VERMA

..... Appellant

Through: Mr Murari Tiwari, Mr Rahul Kumar,
Mr Awnish Pandey, Ms Sweta Rani,
Mr Kamal Nayan Tiwari and Mr
Sarhak Singh, Advs.

versus

MANSI MITTAL

..... Respondent

Through: Mr Prashant Prabhakar, Adv.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. This appeal is directed against the order dated 28.11.2023 passed by the learned Principal Judge, Family Courts, Central District, Tis Hazari Courts, Delhi.
2. *Via* the impugned order, the learned Principal Judge has dismissed the application moved by the appellant for waiving the statutory minimum six-month period that, ordinarily, should subsist between the first and second motion for divorce *via* mutual consent, as per the provisions of the Hindu Marriage Act, 1955 [in short, "1955 Act"].
3. The record shows that the first motion was granted on 25.08.2023.
4. It is not disputed that the petition for a second motion was filed on



04.10.2023 with an application for waiving the cooling-off period. The parties had taken a position before the family court that they had been living separately since 20.07.2022, and that since the marriage had broken down beyond repair, they had moved the court for grant of divorce based on mutual consent.

5. A perusal of the impugned order shows that the principal reason based on which the application for waiver of the statutory six-month period and second motion has been dismissed is the provision contained in Section 15 of the 1955 Act.

6. The learned Principal Judge also took umbrage of the fact that the respondent/petitioner no. 2 intended to get married in December 2023.

7. According to the learned family judge, remarriage can take place only if the statutory period for preferring an appeal has expired even when there is no right to appeal. This reasoning is buttressed by the rationale that waiver of the statutory six-month period cannot be ordered only on the basis that one of the parties has decided to get remarried in December 2023, which fell within the statutory cooling-off period as provided under Section 13B of the 1955 Act.

8. Accordingly, the learned family judge, as noted above, not only dismissed the application for waiving the statutory period but also rejected the second motion petition preferred by the parties for the grant of divorce based on mutual consent. The learned family judge concluded that the second motion petition was premature.

9. Mr Murari Tiwari, counsel who appears on behalf of the appellant, says that the minimum statutory six-month cooling off period will come to an end in and about 25.02.2024. It is, therefore, Mr Murari's contention that



he would be quite satisfied if the court were to permit the parties to seek a waiver of the minimum six (6) month cooling off period, as provided in Section 13B(2) of the 1955 Act, by moving an application in this regard before the concerned family court. In support of his plea, Mr Tiwari relies on the judgment rendered by the Supreme Court in *Amardeep Singh v. Harveen Kaur* (2017) 8 SCC 746.

10. Mr Prashant Prabhakar, who appears on behalf of the respondent, joins Mr Tiwari in the request made by him.

11. We have perused the impugned order. According to us, the fact that a decision was taken by one of the parties to get remarried in December 2023 could not have been a reason for rejecting the application for waiver of the minimum statutory six-month cooling period, as provided in Section 13(B) of the 1955 Act.

12. The learned family judge had to take into account the assertion made by the parties that the marriage was beyond repair.

13. In our view, it is not the period for which parties are in matrimony but the quality of the relationship that has to be taken into account by the judge, amongst other aspects, in ascertaining whether or not a decree should be passed as per the provisions of Section 13B of the 1955 Act.

14. Given what we have stated above, the impugned order is set aside.

15. Liberty is granted to the parties to move the concerned family judge with an application for waiver of the cooling off period provided under Section 13B (2) of the 1955 Act.

16. Once such an application is filed, the same will be disposed of by the concerned court bearing in mind the observations made hereinabove and considering the ratio of the judgment rendered by the Supreme Court in the



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Amardeep Singh case.

17. The appeal is disposed of in the aforesaid terms.
18. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JANUARY 9, 2024

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Signature Not Verified

Digitally Signed By: PREM
MOHAN CHOUDHARY

Signing Date: 18.01.2024
19:03:50

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