

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7390 OF 2025

1. Yash Tushar Shah,
Age: 30 years, Occu. Business,
R/o. M/s. Navalchand Mithulal Jewellers,
Main Road, Khamgaon,
Dist. Buldhana -44430.
2. Mrs. Ankita Yash Shah
(nee Ankita Dipak Kothari)
Age : 29, Occu : Household,
Ro. Vijay Colony, Ganesh Colony,
Jalgaon ..Petitioners

VERSUS

Nil ..Respondent

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Advocate for Petitioners : Ms. Khushi K. Varma

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : JUNE 23, 2025

PRONOUNCED ON : JULY 15, 2025

JUDGMENT :-

1. The petitioners impugn order dated 15.05.2025 passed by learned Family Court, Jalgaon, thereby rejecting application of petitioners seeking waiver of six months period under Section 13-B of Hindu Marriage Act, 1955.
2. Ms. Khushi Varma, learned advocate for petitioners submits that the petitioners married on 26.02.2024 as per Hindu rights and rituals at Jalgaon. However, after a short span of about two months, petitioner no.2 withdrew from her matrimonial home

w.e.f. 07.04.2024 and started residing at her parental house at Jalgaon. Petitioners have not resided together for more than a year. All efforts towards reconcile have failed. Therefore, they filed proceeding under Section 13-B of Hindu Marriage Act seeking divorce by mutual consent vide Hindu Marriage Petition No.F-118 of 2025 before Family Court at Jalgaon. The petitioners have also filed an application seeking waiver of six months period when mediation failed before Family Court. However, said application is rejected vide order dated 15.05.2025. Hence, this writ petition.

3. Learned advocate for petitioners submits that the Hon'ble Supreme Court of India in case of **Amardeep Singh Vs. Harveen Kaur** reported in **(2017) 8 SCC 746** has ruled that the cooling period provided under Section 13-B (2) is not mandatory and can be waived in appropriate cases. The object of six months cooling period is not to perpetuate purposeless marriage or to prolong agony of parties where there are no chances of reconciliation. According to learned advocate appearing for petitioners, in present case, the criteria for waiver of six months cooling period, as has been laid down in case of Amardeep (supra) squarely applies. Therefore, the Family Court could not have mechanically rejected petitioners prayer for waiver.

4. Considering the submissions advanced, it can be observed cooling period prescribed under sub-section (2) of Section 13-B is not mandatory but directory. The following principles are set out by

Hon'ble Supreme Court to deal with application for waiver of waiting period :

- “i) Verifying the period of separation as contemplated in sub-section (1) of Section 13B.*
- ii) all efforts for mediation and conciliation including efforts to reunite the parties have failed and there is no likelihood of reconciliation 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 contemplated under sub-section (2) of Section 13B of the said Act is directory and not mandatory.*
- v) and that the waiting period will only prolong the agony of the parties.”*

5. In present case, it can be observed that all efforts for mediation and reconciliation to bring parties together are failed. The mediation report from Marriage Conciliator dated 07.05.2025 placed before the learned Family Court at Exhibit-12 shows that reconciliation between the parties is not possible. However, they have mutually agreed for divorce by consent. The affidavit is filed by father of applicant no.1 that all such efforts are failed and conciliation is absolutely impossible. It is evident that petitioner no.1 has already paid the amount of Rs.17,00,000/- (Rs. Seventeen Lakh) towards permanent alimony to petitioner no.2, which she has acknowledged. The dispute is genuinely settled in all respect.

6. Having recorded the aforesaid factual backdrop, this Court finds that the learned Judge Family Court ought to have exercised the discretion to waive the waiting period. Hence, instead of relegating parties to the Family Court, but frustrating the very object of making the application for waiver under Section 13-B (2), this Court finds it appropriate to exercise jurisdiction under Article 227 of Constitution of India and by waiving the waiting period, pass further orders for dissolution of marriage. In result, **writ petition is allowed** in following terms :

ORDER

- (i) The impugned order dated 15.05.2025 passed by learned Family Court, Jalgaon below Exhibit-7 in Petition No. F-118/2025 is quashed and set aside.
- (ii) The application at Exhibit-7 in Petition No. F-118/2025 pending before Family Court at Jalgaon for waiving of waiting period of six months under sub-section (2) of Section 13-B of Hindu Marriage Act is allowed and six months waiting period is waived.
- (iii) The application for dissolution of marriage filed under sub-section (1) of Section 13-B of Hindu Marriage Act vide Petition No. F-118/2025 pending before Family Court at Jalgaon is allowed.
- (iv) The marriage solemnized between petitioners on 26.02.2024 is dissolved.

(v) The Family Court at Jalgaon to draw the decree of divorce in terms of dissolution of marriage granted by this Court upon production of certified copy of this order without insisting on presence of parties.

(vi) Writ Petition stands allowed in above terms and disposed of.

(S.G. CHAPALGAONKAR, J.)