

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3960 OF 2025

Digitally
signed by
SONALI
MILIND
PATIL
Date:
2025.03.19
19:50:41
+0530

Yuzvendra Chahal & Anr.

...Petitioners

Versus

Nil

...Respondent

Mr. Nitin K. Gupta a/w. Mr. Monish K. Vig and Mr. Sanchay Mehrotra, for the Petitioner No.1.

Ms. Aditi Mohoni a/w. Ms. Priya Pandey, for the Petitioner No.2.

CORAM: MADHAV J. JAMDAR, J.

DATED : 19th MARCH 2025

PC:-

1. Heard Mr. Nitin Gupta, learned Counsel appearing for the Petitioner No.1 and Ms. Aditi Mohoni, learned Counsel appearing for the Petitioner No.2.

2. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the order dated 20th February 2025 passed by the learned Judge, Family Court No.2 at Bandra, Mumbai below Exhibit-6 in Petition No.F-351 of 2025. The said Application bearing Exhibit-6 has been filed seeking waiver of the statutory cooling-off period of six months as specified in

Section 13-B(2) of the Hindu Marriage Act, 1955 (“**the said Act**”) and seeking that immediate decree of divorce be granted to the Petitioners. By the impugned order, the said Application has been rejected.

3. Perusal of the record shows that the said Petition No.F-351 of 2025 has been filed for divorce by mutual consent on 5th February 2023 under Section 13-B of the said Act read with Section 7 of the Family Courts Act, 1984. The Consent Terms arrived between the Petitioner No.1 and the Petitioner No.2 are annexed to the said Petition.

4. The said Application bearing Exhibit-6 has been filed in said Petition No.F-351 of 2025 for waiver of statutory cooling-off period of six months as prescribed under Section 13-B(2) of the said Act on 20th February 2025. It is stated in the said Application that marriage between the Petitioners was solemnized on 22nd December 2020 at Gurugram, Haryana. However, due to irreconcilable and temperamental differences, their marital relationship broke down and since June 2022 the parties have had no marital relationship i.e. since last more than 2 and 1/2 years.

The Petitioner No.1 is residing at Gurugram, Haryana and the Petitioner No.2 is residing at Andheri, Mumbai.

5. It is further stated in the said Application bearing Exhibit-6 that the Petitioner No.1 is a Sportsman by profession playing cricket at International Level and is participating in various Cricket Leagues and his services have recently been contracted for the Indian Premier League (IPL), a premier T20 league of cricket by BCCI that mandates him to relocate to Punjab and other States in India frequently for attending training camps, playing matches etc. It is further stated in the said Application that the Petitioner No.1 is further undergoing rigorous training and put all out effort to get selected in the Indian Cricket Team again, including by playing in various tournaments from time to time and the culmination of the divorce proceedings would help Petitioner No.1 in moving ahead with his life smoothly. It is stated that both the Petitioners are not staying together since June 2022 and therefore, cooling period of six months as per Section 13-B(2) of the said Act be waived.

6. It is further stated that the Petitioner No.2 is staying at Andheri, Mumbai and she is a social media personality, relies on

digital platforms such as Instagram and YouTube for her livelihood. Her career is sustained by brand endorsements, collaborations and audience engagement. It is also stated that the uncertainty surrounding her marital status has adversely affected the professional life of the Petitioner No.2.

7. It is also stated in the Application that due to adverse publicity in media, both the Petitioners are suffering and therefore, it is necessary to allow waiver of statutory cooling-off period of six months prescribed under Section 13-B(2) of the said Act and grant immediate divorce.

8. The said Application bearing Exhibit-6 has been rejected by the learned Judge, Family Court No.2 at Bandra, Mumbai *inter alia* on the following grounds:

- (a) The Consent Terms have not been completely complied with. The Marriage Counsellor has submitted report at Exhibit-7 titled as “Part Compliance Report” and therefore, there is no full and complete compliance of the Consent Terms.

(b) As far as the criticism in social media is concerned, learned Judge has observed that both the Petitioners are public figures and therefore, both of them have to face the same and therefore, the said factor cannot be taken into consideration for waiver of statutory cooling-off period of six months prescribed under Section 13-B(2) of the said Act and grant immediate divorce.

9. Perusal of the record shows that the relevant clause of the Consent Terms of which non-compliance is referred by the learned Judge, Family Court, Mumbai is clause No.3. The said clause No.3 reads as under:

“3. The Petitioners agree, declare and confirm that they shall, at the time of recording of First Motion of the Petition, jointly move an application to the Court seeking waiver of the statutory cooling-off period prescribed under Section 13B(2) of the Hindu Marriage Act, 1955. In the event the waiver is granted by the Court it is agreed and confirmed that Petitioner No.2 shall, ensure that payment as per the second tranche of Rs.2,37,50,000/- (Rupees Two Crore Thirty-Seven Lakh Fifty Thousand Only) is handed over to the Petitioner No.1 at the time of passing of the decree of divorce, in the presence of the Court appointed Counsellor. It is also agreed between Petitioners that in case of refusal for grant

of waiver of statutory cooling-off period, necessary steps in accordance with law shall be taken by both Petitioners to seek decree of divorce, at the earliest.”

(Emphasis added)

The said clause No.3 clearly states that in the event waiver of the statutory cooling-off period is granted by the Court, the Petitioner No.1 shall ensure that second installment of Rs.2,37,50,000/- (Rupees Two Crores Thirty-Seven Lakhs Fifty Thousand Only) will be paid to the Petitioner No.2 at the time of passing of decree of divorce in the presence of the Court appointed Counsellor.

10. It is an admitted position that total amount agreed and undertaken to be paid by the Petitioner No.1 to the Petitioner No.2 as per the Consent Terms is Rs.4,75,00,000/- (Rupees Four Crores Seventy Five Lakhs Only). The first installment of Rs.2,37,50,000/- has been paid at the time of first motion. As the second installment is to be paid at the time of passing the decree of divorce, the learned Judge, Family Court, Mumbai is not right in observing that the Consent Terms are only partly complied with. In fact, whatever is to be complied with before passing order on waiver application has been complied with. In that context, the Marriage Counsellor

has submitted report at Exhibit-7 titled as “Part Compliance Report” and on the basis of said report it cannot be said that conciliation proceedings are not completed.

11. As far as second reason concerning the criticism on public media is concerned, the same is only one aspect mentioned in the said Exhibit-6 Application along with other aspects. In fact, in the Application it is specifically stated that both the Petitioners are staying separately since June 2022 and the joint Petition for Divorce by mutual consent has been filed on 5th February 2025 i.e. after a period of 2 and 1/2 years. Therefore, statutory period of six months before filing of the second motion as specified in Section 13-B(2) in addition to the statutory period of one year under Section 13-B (1) is complied with.

12. Learned Counsel appearing for the Petitioners are right in contending that this aspect that both the parties are staying separately since 2 and 1/2 years and therefore, there is compliance of statutory period of six months before filing of second motion as specified in Section 13-B(2) of the said Act in addition to the compliance of statutory period of one year under Section 13-B(1)

of the said Act is not taken into consideration by the learned Judge, Family Court, Mumbai. As far as, reliance of the learned Family Court on the Marriage Counsellor's report titled as "Part Compliance Report" and on the basis of the same observing that the Consent Terms have not been complied with and also that the counseling is not completed, is clearly erroneous for the above reasons and in the facts and circumstances of this case.

13. In view of the above factual aspects, it is necessary to set out Section 13-B of the said Act, which is concerning divorce by mutual consent and the same reads as under:

"13-B. Divorce by mutual consent.—

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the

meantime, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]'

(Emphasis added)

14. As held by the Supreme Court in the case of *Amardeep Singh vs. Harveen Kaur*¹, the object of the above provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The relevant discussion is in paragraphs 17 and 19, which reads as under:

“17. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling-off period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court

1 (2017) 8 SCC 746

should not be powerless in enabling the parties to have a better option.”

“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.”

Thus, as observed by the Supreme Court the object of the cooling-off period is to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The Supreme

Court in paragraph No.19 has given guidelines for consideration of waiver application.

15. A learned Single Judge in the decision in the matter between ***Sneha Akshay Garg vs. Nil²*** has explained the decision of the Supreme Court in ***Amardeep Singh*** (supra) as follows:

“8. The guiding principles in the Supreme Court's decision in the case of Amardeep Singh need to be correctly understood and applied to achieve the object of the provision of Section 13-B of the said Act. The Hon'ble Supreme Court has observed that the object of the waiting period was to provide a safeguard against a hurried decision, if there was otherwise a possibility of reconciliation. Thus, the waiting period is a precautionary provision to avoid any injustice to any party and rule out the possibility of reconciliation. Thus, the purpose of the waiting period needs to be correctly understood while deciding the application for a waiver. Seeing the rapid changes in an evolving society, the judiciary would play a vital role in assisting the parties seeking the dissolution of their marriage by mutual consent. Thus, keeping in mind the changing social conditions, a realistic approach needs to be adopted.”

“9. Normally, we come across cases where parties continue to fight, though there is no possibility of reconciliation. In such cases, the parties are

*encouraged to explore the possibility of an amicable settlement and are even referred for mediation so that they can put an end to the litigation. **However, when the parties apply for divorce by mutual consent, they have taken a conscious decision to separate and thus have shown a reasonable approach. Such a decision shows that they have decided to move ahead, and thus, there is every chance of rehabilitation. The newly married couple not being able to reside together, or a couple married for quite some time is unable to continue to stay together for various reasons, itself would be a mental agony. Thus, once the Court is satisfied that the parties have taken a conscious decision to separate and move ahead and that there is no possibility of reconciliation, the Court should adopt a realistic approach and exercise the discretion to waive the waiting period. Hence, it is the duty of the Court to assist the parties by exercising the discretion to waive the cooling off period and free them from the stress of their application for divorce remaining pending.***

(Emphasis added)

16. This case is required to be considered in view of the above position of law.

17. The clause No.(i) of paragraph No.19 in the case of **Amardeep Singh** (supra) is already complied with. Both the Petitioners are staying separately since June 2022 and the joint

Petition for Divorce by mutual consent has been filed on 5th February 2025 i.e. after a period of 2 and 1/2 years. Therefore, statutory period of six months before filing of the second motion as specified in Section 13-B(2) in addition to the statutory period of one year under Section 13-B (1) is complied with.

18. As far as the conciliation efforts are concerned, the factual position on record clearly shows that parties are staying separately since June 2022. Even conciliation report which has been submitted to the learned Judge, Family Court titled as “Part Compliance Report” i.e. part compliance of the Consent Terms. Thus, it is clear that all efforts of mediation/conciliation to reunite the parties have failed.

19. The parties have filed the Consent Terms agreeing for permanent alimony and also provision is made regarding stridhan, jewellery and return of valuables etc. It is agreed position as set out in the impugned order that as far as stridhan, jewellery and valuables are concerned, they have been exchanged as per the Consent Terms.

20. Thus, it is clear that parties have genuinely settled their differences including all pending issues between them.

21. It is an admitted position that except the said amount of second and final installment i.e. Rs.2,37,50,000/-, nothing is balance to be paid by the Petitioner No.1 to the Petitioner No.2. As far as the said amount is concerned, it is also agreed position that the Demand Draft of the said amount is ready and the same will be handed over by the Petitioner No.1 to the Petitioner No.2 at the time of passing of the decree for divorce in terms of clause No.3 of the Consent Terms. Thus, it is clear that in the facts and circumstances waiting period will only prolong their agony.

22. Thus, there is no impediment in granting the Application bearing Exhibit-6 filed in Petition No.F-351 of 2025. Accordingly, the following order is passed:

ORDER

(a) The impugned order dated 20th February 2025 passed by the learned Judge, Family Court No.2 at Bandra,

Mumbai below Exhibit-6 in Petition No.F-351 OF 2025 is quashed and set aside.

- (b) The said Application bearing Exhibit-6 in Petition No.F-351 of 2025 is allowed by waiving the statutory cooling-off period of six months prescribed under Section 13-B(2) of the said Act.

23. Learned Counsel appearing for the Petitioner No.1 informs the Court that as the Petitioner No.1 is participating in Indian Premier League (IPL), the Petitioner No.1 will not be available from 21st March 2025 and therefore, the further delay will prolong the agony. As observed by this Court in the decision of *Sneha Akshay Garg* (supra), it is the duty of the Court to assist the parties by exercising the discretion to waive the cooling off period and free them from the stress of their application for divorce remaining pending. In the facts and circumstances of this case, learned Judge, Family Court No.2 at Bandra, Mumbai is requested to decide the Petition No.F-351 of 2025 filed for divorce by mutual consent under Section 13-B of the said Act by tomorrow i.e. on 20th March 2025 by taking the said Petition No.F-351 of 2025 on board.

24. The Writ Petition is allowed in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]