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CRP.No.5815 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:20.11.2025

Pronounced on:28.11.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP. No.5815 of 2025

1. Mrs. Rajakumari (Wife)

2. Mr.Sachdevraj (Husband)

Petitioner(s)

Vs

NIL

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Docket Order dated 24.10.2025 passed by learned Principal Judge, Family Court, Chennai in HMOP SR. No.5685 of 2025, whereby the petition filed by the Petitioners for dissolution of marriage by mutual consent under Section 13B of the Hindu Marriage Act, 1955, was returned as not maintainable; and consequently, direct the Family Court to take the same on file, number it, and dispose of the petition in accordance with law.

For Petitioners : Mrs.Sumathi Lokesh

ORDER



The petitioners are husband and wife, their marriage having been solemnized on 03.02.2025. The petitioners citing incompatibility and irreconcilable differences and also that the marriage has not been consummated and that they are living separately from 04.04.2025, have approached the Family Court, Chennai seeking dissolution of marriage by mutual consent under Section 13-B of the Hindu Marriage Act, 1955 (in short 'Act').

2. The petitioners also moved an Application seeking waiver of the mandatory one year period under Section 14 of the Act. The said Application has been returned as not maintainable. The learned counsel appearing for the petitioner Mrs.Sumathi Lokesh, would submit that despite the Court bringing to notice of this Court that the Hon'ble Supreme Court has upheld the discretion of the Courts to waive the waiting period in *Shilpa Sailesh vs Varun Sreenivasan*, reported in 2023 (14) SCC 231; *Amardeep Singh v. Harveen Kaur*, reported in 2017 (8) SCC 746 and the order of this Court in *Shivkarthik.G.S and M.S.Swetha Pierce's case*, in CRP. No.4013 of 2025, dated 04.09.2025, the application for waiver has been mechanically rejected without even affording a hearing to the petitioners. The said order of return dated 24.10.2025 is under the challenge in the present revision petition.



3. In *Shivkarthik's* case (referred herein supra), the petitioners who were Indian Christians and bound by the Indian Divorce Act, had sought for mutual consent divorce by invoking Section 10A of the Indian Divorce Act. The Family Court returned the petition stating that the petition could not be filed within two years from the date of separation. In fact, in the said case, the separation was only from 01.01.2025 and the OP was filed on 16.04.2025. I had relied on the decision of the Kerala High Court in *Anup Disalva and Another vs. Union of India*, reported in 2022 SCC Online Ker 6415, where the Hon'ble Division Bench of the Kerala High Court, in fact struck down the requirement of the mandatory waiting period as being unconstitutional and violative of fundamental rights. I have also relied on the decision of the Hon'ble Supreme Court, in *Shilpa Sailesh's* case (referred herein supra), where the Hon'ble Supreme Court held that the Courts have a discretion to waive the mandatory six months period under Section 13B of the Hindu Marriage Act, upon circumstances shown to the satisfaction of the Court.

4. The Hon'ble Supreme Court in a later decision in *Amardeep Singh's* case (referred herein supra), held that the Courts can waive the cooling period of six months under the Hindu Marriage Act to enable the parties to obtain a divorce by mutual consent, earlier in point of time. I had taken note of the object of the mandatory period fixed under the



statute was only to provide an option to the parties to re-think their decision to go separate ways. In fact, the Hon'ble Division Bench of the Kerala High Court, further held that the fact that an Application for divorce by mutual consent presented by the husband and wife jointly, reflects the will of the parties, to get separated and annul the marriage itself and when a petition for divorce could be filed on other available grounds, without any waiting period and the power of the Court to grant divorce, even before lapse of one year or two years, as the case may be, then there can be no impediment for the parties to seek waiver of the mandatory period for filing the divorce petition by mutual consent itself.

5. Considering all the facts of the case on hand in *Shivkarthik's case* (referred herein supra), I had allowed the revision and directed the Family Court to number the mutual consent divorce petition and pass orders in accordance with law. The facts of the present case are also quite similar to the facts in *Shivkarthik's case*.

6. In the present case, as already set out herein above, the parties had been living separately from 04.04.2025, soon after their marriage was solemnized on 03.02.2025. The parties have consciously decided to get separate and the very filing of the consent divorce petition clearly establishes their intention in this regard. I find from the consent petition



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that both the husband and wife are well educated and professionally engaged and there are no children from the marriage and they have taken a firm decision, with no regrets or looking back on their decision, to dissolve their marriage. Even in the CRP, separate sworn affidavits have been filed by the first petitioner as well as the second petitioner stating that not permitting them to file the mutual consent divorce petition would only increase and prolong their mental agony and suffering and delay the process of re-building their personal life and finding happiness anew. In the light of the above, I do not see why the Family Court should not entertain the consent divorce petition following the ratio laid in *Shivkarthik's* case (referred herein supra).

7. In the light of the above, this Civil Revision Petition is allowed and the return dated 24.10.2025 in O.P.SR. No.5685 of 2025 is set aside and the learned Principal Family Court Judge, Chennai shall number the HMOP SR. No.5685 of 2025 and dispose of the Section 13-B petition within a period of four (4) weeks from the date of receipt of the copy of the order. No costs.

28.11.2025

rkp

Index : Yes / No

Internet : Yes / No



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To:
The Principal District Judge,
Chennai.

P.B.BALAJI, J.,

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Pre-delivery order in
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