



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2026

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 938 of 2026

1. Aswin Dhananjai Krishnaswamy
S/o Krishnaswamy,
17/7, Ram Nagar first Main Road,
Guruvayurappan Kovil, Nanganallur,
Kancheepuram, Tamil Nadu 600061
2. Jeritza J J Jalish
D/o A.Jayakumar,
No 12, 3rd Block, Grn Apartment, Vijaya
Garden, Priya Nagar, Urapakkam,
State Bank, Urapakkam, Kancheepuram,
Tamil Nadu 603210

..Petitioner(s)

Vs

Nil

..Respondent(s)

PRAYER

Civil Revision Petition filed under Art.227 of Constitution of India, praying to set aside the docket order dt. 30.01.2026 passed in S.R.No.247/2026 in HMOP No.468/2025 by the Honble Family court Judge at Chengalpattu and allow this Revision and grant consequential relief to dissolve the marriage between the petitioners dt. 11.02.2024.

For Petitioner(s): Mr. Ajay Francis Inigo Loyola

For Respondent(s): Nil



ORDER

Today, when the matter taken up for hearing, submitting the ratio laid down in the authorities, the learned counsel for petitioners would submit that there is no possibility for re-union between the parties inspite of elders advise and already they have got separated for more than a year and hence, the marriage is irretrievably broke down. Therefore, the interregnum period of 6 months was prayed to waive before the trial court. But the trial judge has not inclined to waive the said 6 months period and the said application filed by him has also been returned by the trial judge holding that six months period has not been complied. Aggrieved over that, this Civil Revision Petition has been filed.

2. As per the ratio laid down in the authority held in ***First Appeal No.4404 of 2025***, wherein in paragraphs 7 and 8, it has been held as follows :-

*“7. It is well-settled that the six months period enumerated in Section 13B of the Act of 1955 is directory and not mandatory. The issue is no longer res integra. Apt would be the judgment of the Apex Court in the case of **Amardeep Singh vs. Harveen Kaur** reported in (2017) 8 SCC 746, the following issue was considered and while dealing with the issue, in paragraphs 16 to 20, it is observed thus:-*

“whether the provision of Section 13B of the Act of 1955 laying down cooling off period of six months is a mandatory requirement or it is open to the family court to waive the same having regard to the interest of justice in an individual case.

16. We have given due consideration to the issue involved. Under the traditional Hindu Law, as it stood prior to the



statutory law on the point, marriage is a sacrament and cannot be dissolved by consent. The Act enabled the court to dissolve the marriage on statutory grounds. By way of amendment in the year 1976, the concept of divorce by mutual consent was introduced. However, Section 13B(2) contains a bar to divorce being granted before six months of time elapsing after filing of the divorce petition by mutual consent. The said period was laid down to enable the parties to have a rethink so that the court grants divorce by mutual consent only if there is no chance for reconciliation.

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

18. In determining the question whether provision is mandatory or directory, language alone is not always decisive. The court has to have the regard to the context, the subject matter and the object of the provision. This principle, as formulated in Justice G.P.Sing's "Principles of Statutory Interpretation" (9th Edn.,



2004) has been cited with approval in *Kailash versus Nunhkuand ors.* 15 as follows :-

“34. ..The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive and regard must be had to the context, subject mater and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage Lord Campbell said : ‘No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered.’”

“For ascertaining the real intention of the legislature’, points out Subbarao, J., ‘the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, viz., that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered’. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by



holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory”

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 13B(2), it can do so after considering the following :-

- (i) the statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Sec.13B(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 XXXIIA 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 concerned court.

20. Since we are of the view that the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming



cohabitation and there are chances of alternative rehabilitation.”

8. The Apex Court while considering the object behind and provisions of the Act has held that the court dealing with the matter if is satisfied that a case is made out to waive the statutory period under Sec. 13B(2), it can do so after considering the parameters indicated in paragraph 19. The Apex Court, has also observed that it would be open to the parties to file an application seeking waiver of the cooling-off period one week after the first motion, giving reasons for the prayers.”

3. As per the ratio laid down by this court in the authority held in **C.R.P.No. 93 of 2021 dated 16.02.2021**, it has been held as follows :-

“10. However, we find that the question whether Section 13B(2) is to be read as mandatory or discretionary needs to be gone into.

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13. Learned amicus submitted that waiting period enshrined under Section 13(B) 2 of the Act is directory and can be waived by the court where proceedings are pending, in exceptional situations.

14. The Court must be satisfied that the parties were living separately for more than the statutory period and all efforts at mediation and reconciliation have been tried and have failed and there is no chance of reconciliation and further waiting period will only prolong their agony.”



4. Considering the submissions made on the side of Revision Petitioner as well as the ratio laid down in both cases, the parties were living separately for more than the statutory period and all the efforts at mediation and reconciliation was failed, there is no chance for reunion. They have also got no children out of marriage. Further, the waiving period will only prolong their agony, but the trial judge failed to take note of the same. Therefore, the observation made by the trial judge in SR.No. 247 of 2026 in HMOP No. 468 of 2025 is set aside. The trial judge is directed to take the waiver application on file and to consider afresh the submissions made on the side of Revision Petitioner and dispose the case as early as possible within a period of four weeks from the date of receipt of copy of this order. Accordingly, this Civil Revision Petition is disposed of. No costs.

09-03-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

RPP

N.B. : Issue the order copy on 10.03.2026

To

The Family Court, Chengalpattu.



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CRP No. 938 of 2



T.V.THAMILSELVI J.

RPP

CRP No. 938 of 2026

09-03-2026