

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 2nd of March, 2023

MISC. PETITION No. 1266/2023

BETWEEN:-

**PRASANG S/O PRAHLAD CHOUKSE, AGED ABOUT 30
YEARS, OCCUPATION: BUSINESS 23, MANGAL NAGAR,
NEAR BPCL PETROL PUMP, INDORE (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ARPIT SINGH, ADVOCATE)

AND

**SMT. VAISHNO CHOUKSE W/O SHRI PRASANG CHOUKSE
D/O RAJU RAI, AGED ABOUT 29 YEARS, OCCUPATION:
BUSINESS PLOT NO. 98, NARI ROAD, IN FRONT OF DIKSHIT
NAGAR, GURU TEJBAHADUR NAGAR, UPPAL VADI,
NAGPUR (MAHARASHTRA)**

.....RESPONDENT

(SHRI ARPIT GUPTA, ADVOCATE)

*This petition coming on for admission this day, the court passed the
following:*

ORDER

This miscellaneous petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 27.02.2023, passed in RCS (Hindu Marriage) case no.243/2023 whereby, the petitioner's application seeking waiving of cooling off period of 6 months has been rejected on the ground, that requisite period of 18 months has not lapsed after the party started residing separately.

Brief facts of the case are that the petitioner/husband and respondent/wife got married on 02.07.2021, however due to irreconcilable differences they started residing separately from 02.08.2021, and thus they resided together for 30 days only and since all the efforts of their reconciliation failed, both of them have filed an application on 30.01.2023, under section 13(B) of the Hindu Marriage Act (hereinafter to be referred as “Act of 1955“). On 17.02.2023 an application under section 21(B) of the Act of 1955 seeking waiving of cooling off period of 6 months under section 13(B)(2) of the Act of 1955 was also filed, which has been dismissed by the learned Judge of the Family Court vide impugned order dated 27.02.2023, holding that the application for divorce ought to have been filed after completion of 18 months period from the date of separation and in the present case it has only been filed after 17 months.

Counsel for the petitioner has submitted that settlement has already taken place between the parties and the petitioner has already paid a sum of Rs.17,50,000/- (Rs. Seventeen Lacs Fifty Thousand only) to the respondent through demand draft, document regarding which is also placed on record.

Counsel has also relied on a decision rendered by this Court in **M.P. No. 2623/2022 dated 28.06.2022 (Mrs. Shefali Vs. Tejaswa)** wherein this Court has also relied upon the decision rendered by the Hon'ble Supreme Court in the case of *Amardeep Singh Vs. Harveen Kaur* reported as **2017(8)SCC 746** as also in the case of *Amit Kumar Vs Suman Beniwal* reported as **2021 SCC online 1270** and thus, it is submitted that the rejection of petitioner's application under section 13-B(2) of the Act of 1955 was erroneous. It is submitted that even as of now

it has already been more than 18 months from the date the parties are residing separately.

Counsel for the petitioner has submitted that the period of 18 months' separation completed on 02.02.2023 whereas the application for dispensing with cooling off period of 6 months was filed under section 13-B(2) of the Act of 1955 on 17.02.2023, which ought to have been allowed by the learned Judge of the Family Court.

Counsel for the respondent, on the other hand has also supported the petition and it is submitted that the petition may be allowed as parties have arrived at a settlement and no purpose would be served to keep the matter pending. It is also submitted that both the parties are educated and are engaged in the business of Indore and Nagpur.

Heard learned Counsel for the parties and perused the record

The following chronology emerges in the present case:-

S.No.	Date	Events
1.	02.07.2021	Petitioner and Respondent got married.
2.	02.08.2021	Petitioner and Respondent started residing separately.
3.	30.01.2023	Petitioner and Respondent filed petition for divorce by mutual consent under Section 13-B of Hindu Marriage Act.
4.	02.02.2023	18 months from the date of separation completed.
5.	17.02.2023	Application under Section 21-B of Hindu Marriage Act filed by Petitioner and Respondent seeking waiving of Cooling off period of 6 months prescribed under Section 13-B(2) of Hindu Marriage Act.
6.	27.02.2023	Application under 21-B of Hindu Marriage Act dismissed by learned court below.
7.	28.02.2023	Present Petition filed.

It is apparent from the aforesaid chronology that 18 months from the date of separation, i.e., 02.08.2021, completed on 02.02.2023. The

application under section 13-B(2) of the Act of 1955 seeking waiving of cooling off period of 6 months was filed on 17.02.2023, but the application has been dismissed relying upon the decision rendered by the Hon'ble Supreme Court in the case of *Amardeep Singh (Supra)*. So far as the decision rendered by the Supreme Court in the case of *Amit Kumar (supra)* is concerned, Paras 22, 27 and 28 of the said decision are relevant, which read as under:

“22. The Family Court, as well as the High Court, have misconstrued the judgment of this Court in **Amardeep Singh v. Harveen Kaur (supra)** and proceeded on the basis that this Court has held that the conditions specified in paragraph 19 of the said judgment, quoted hereinabove, are mandatory and that the statutory waiting period of six months under Section 13B (2) can only be waived if all the aforesaid conditions are fulfilled, including, in particular, the condition of separation of at least one and half year before making the motion for decree of divorce.

27. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13B (2) of the Hindu Marriage Act, the Court would consider the following amongst other factors: -

- (i) the length of time for which the parties had been married;
- (ii) how long the parties had stayed together as husband and wife;
- (iii) the length of time the parties had been staying apart;
- (iv) the length of time for which the litigation had been pending;
- (v) whether there were any other proceedings between the parties; (vi) whether there was any possibility of reconciliation;

(vii) whether there were any children born out of the wedlock;

(viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.

In this Case, as observed above, the parties are both well-educated and highly placed government officers. **They have been married for about 15 months.** The marriage was a non-starter. Admittedly, the parties lived together only for three days, after which they have separated on account of irreconcilable differences. The parties have lived apart for the entire period of their marriage except three days. It is jointly stated by the parties that efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife. **Even after over 14 months of separation, the parties still want to go ahead with the divorce.** No useful purpose would be served by making the parties wait, except to prolong their agony.”

(emphasis supplied)

It is apparent from the aforesaid decision that *inter alia*, the Court is required to see if there are irreconcilable differences between the parties and it is also held that it is not necessary that 18 months period must be completed from the date when the parties started residing separately. Thus, it is held in the aforesaid decision that the discretion to waive the statutory period of 6 months lies with the court only subject to certain condition.

In view of the same, considering the aforesaid chronology, since in the present case, the parties are already residing separately for more than eighteen months, due to irreconcilable differences, no purpose would be

served to force them to further wait for six more months. In such circumstances, their mandatory period of six months is hereby waived in entertaining the application under Section 13-B (2) of the Act.

Resultantly, order dated 27.02.2023 (Annexure P/1) passed in RCS (Hindu Marriage) Case No.243/2023 by the learned Principal Judge, Family Court, Indore (MP) is hereby quashed and the learned Judge of the Family Court is requested to decide the application as expeditiously as possible within a period of one week.

Let the parties appear before the Family Court, Indore on **21.03.2023**.

Accordingly, Miscellaneous Petition No.1266/2023 stands **disposed of**.

(SUBODH ABHYANKAR)
JUDGE

das