

**HIGH COURT OF MADHYA PRADESH : JABALPUR**

Case No.	M.P. NO.2440/2021
Parties Name	Swarit Verma <u>Vs.</u> Kanchan Verma
Date of judgment	24.09.2021
Bench Constituted	Single Bench
Judgment delivered by	Justice Satyendra Kumar Singh
Whether approved for reporting	Yes
Name of the counsel for the parties	<b>For the petitioner</b> : Shri Girish Shrivastava, Advocate  <b>For the respondent</b> : Shri Piyush Gupta, Advocate
Law Laid down	Provisions of Section 13-B (2) of Hindu Marriage Act 1955, is directory not mandatory and the court dealing with the matter, has jurisdiction to waive cooling-off period of six months.
Significant paragraph No.	8 and 9.

**ORDER**  
**(24/09/2021)**

This petition under Article 227 of Constitution of India has been filed by the petitioner-husband against the impugned order dated 29.7.2021, passed by the Court of Principal Judge, Family Court, Jabalpur in Matrimonial Case No.728/2021, whereby an application jointly filed by the petitioner-husband and respondent-wife for urgent hearing in second motion of the application filed under Section 13-B r/w Section 25 of the Hindu Marriage Act 1955, for divorce on mutual consent, in order to the cooling-off period of six months has been rejected.

2. Factual matrix giving rise to this petition is that marriage between the parties took place on 13.12.2006 at Jabalpur. Out of their

wedlock, they were blessed with a child namely Tanishq on 26.6.2012. Since 15.9.2019, parties are living separately. Disputes between them gave rise to civil and criminal proceedings. Finally on 28.7.2021 a settlement was arrived at to resolve all the disputes and seek divorce by mutual consent. The respondent-wife is to be given permanent alimony of Rs.5,00,000/-. Custody of child is to be with the petitioner-husband. Accordingly, on 28.7.2021 an application under Section 13-B r/w Section 25 of Hindu Marriage Act 1955 was filed before the Court of Principle Judge, Family Court, Jabalpur, which was registered as Matrimonial Case No.728/2021. In support of their application parties presented their affidavits under Order 18 Rule 4 of CPC. The petitioner-husband handed over a cheque for an amount of Rs.2,00,000/- to the respondent-wife towards part payment of permanent alimony. On the same day parties filed an application for urgent hearing in second motion of the application, filed under Section 13-B r/w Section 25 of Hindu Marriage Act 1955, in order to waive the statutory period of six months on the ground that relation between the parties have broken down completely and the fact that prolong a litigation is only causing agony to the petitioner and respondent.

3. The learned Family Court vide impugned order dated 29.7.2021, dismissed the application for urgent hearing in second motion holding that except Hon'ble the Apex Court no Court has power to waive cooling-off period stipulated in Section 13-B(2) of

Hindu Marriage Act, 1955. Learned Family Court while passing the impugned order observed that Hon'ble the Apex Court in the case of **Anil Kumar Jain Vs. Maya Jain (2009) 10 SCC 415**, has specifically held that Civil Court and the High Court could not exercise the power contrary to the statutory provisions and only the Apex Court under Article 142 of the Constitution of India can exercise such power in the interest of justice. Learned Family Court further observed that in the case of **Manish Goyal Vs. Rohini Goyal, (2010) 4 SCC 393**, it has also been held by Hon'ble the Apex Court that jurisdiction under Article 142 of Constitution of India could not be used to waive statutory period of six months for filing the second motion under Section 13-B of Hindu Marriage Act, as doing so will be passing an order in contravention of statutory provisions. Learned Family Court further observed that since the above findings of Hon'ble the Apex Court in both the above cited cases have not been over turned by a larger Bench, therefore, this Court has no jurisdiction to waive cooling-off period under Section 13-B of Hindu Marriage Act.

4. Petitioner-husband has moved this Court on the ground that period mentioned in Section 13-B(2) of Hindu Marriage Act is not mandatory but directory and the Court dealing with the matter has jurisdiction to waive cooling-off period of six months. Reliance has been placed, inter-alia, on the decision of the Apex Court in the case

of **Amardeep Singh Vs. Harveen Kaur** (2017) 8 SCC 746, wherein it has been held as follows:

“ . . . . . we are of the view that the period mentioned in Section 13-B(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.

5. Heard both the parties and perused the record.

6. It is true, that the findings given by Hon’ble the Apex Court in the cases of **Anil Jain** (Supra), and in the case of **Manish Goyal** (Supra), with regard to exercise of jurisdiction to waive statutory period of six months under Section 13-B(2) of the Marriage Act has not been over turned by a larger Bench of Hon’ble the Apex Court, therefore, the same still holds its field as observed in the case of **Amardeep Singh** (Supra), wherein Hon’ble the Apex Court has held as follows:

“10. After considering the above decisions, we are of the view that since Manish Goel holds the field, in absence of contrary decisions by a larger Bench, power under Article 142 of the Constitution cannot be exercised contrary to the statutory provisions, especially when no proceedings are pending before this Court and this Court is approached only for the purpose of waiver of the statute.

7. However, the issue whether the provisions of Section 13-B(2) is to be read as mandatory or discretionary were not discussed in both the above cited **Anil Jain** (Supra) and **Manish Goel** (Supra) cases, as observed by Hon'ble the Apex Court in the case of **Amardeep Singh** (Supra), in para 11 as follows:

“11. However, we find that the question whether Section 13-B(2) is to be read as mandatory or discretionary needs to be gone into. In *Manish Goel*, this question was not gone into as it was not raised.”

8. Hon'ble the Apex Court in the case of **Amardeep Singh** (Supra), after discussing both of aforesaid judgments in the case of **Anil Jain** (Supra) and **Manish Goel** (Supra), has given his finding on the above issue and held as under:

18. . . . . 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 [Section 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.

9. In view of the above findings of Hon'ble the Apex Court, now it is settled that if the court, dealing with a matter, is satisfied that a case is made out to wave the statutory period under [Section 13B\(2\)](#) of Hindu Marriage Act, it can do so after considering the above conditions mentioned in the above cited case-law, therefore, the impugned order passed by the learned Family Court on the ground of want of jurisdiction is liable to be and is hereby set aside. The Family Court is directed to consider and decide the application filed by the parties for urgent hearing in second motion of the application filed for divorce on mutual consent, afresh keeping in mind the above directions without any unnecessary delay.

10. This petition is disposed of, accordingly.

(Satyendra Kumar Singh)  
Judge

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