

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 5822 / 2021

Pritam Vijaykumar Dargad

Age : 31 years, Occu. Service,

R/o. C/o. Zensar I.T. Park,

Kharadi Area, Pune.

District Pune.

.. Petitioner

Versus

Sujata Pritam Dargad

Age : 27 years, Occu. Household,

R/o. C/o. Shri Ashok Laddha

Jaikwadi Vasahat, Gangakhed,

Taluka – Gangakhed, Dist. Parbhani.

.. Respondent

Mr. Rathi Swapnil S., Advocate for Petitioner.

Mr. S.S. Gangakhedkar, Advocate for Respondent / Sole.

CORAM : **SANDEEP K. SHINDE J.**
RESERVED ON : **29th JUNE, 2021.**
PRONOUNCED ON : **3rd JULY, 2021.**

JUDGMENT : -

1. Rule.
2. Rule made returnable forthwith. Heard finally with the consent of parties.
3. Solitary, question that emanates for consideration in this Petition is; Whether the minimum period of six months stipulated under Section 13-B(2) of the Hindu Marriage Act, 1955 (the Act) for a motion for passing decree of divorce on the basis of mutual consent is mandatory or can be relaxed in any exceptional situations ?
4. The parties to the petition, are husband and wife, whose marriage was solemnized on 22nd April, 2015. Their temperament seldom matched. Resultantly, wife had instituted

the proceedings under Section 125 of the Code of Criminal Procedure, 1973; and under Domestic Violence Act, 2005. She withdrew both the proceedings. Husband had filed a petition under Section 9 of Hindu Marriage Act. It was decreed in November, 2018. The Prosecution launched against the husband under Section 498-A of the Indian Penal Code, 1860, also has been settled. As on today, no matrimonial disputes or any proceedings arising therefrom, are pending against each other. On 4th February, 2021, parties to this petition, instituted the petition for dissolution of marriage by mutual consent. In consideration of the facts of the case, an application was moved for waiving cooling period for six months. The learned Civil Judge, Senior Division, Gangakhed, rejected the application only on the ground that efforts were not made for mediation to reunite the parties.

5. The learned trial Court relied on the judgment of the Hon'ble Apex Court in the case of **Amardeep Singh Vs. Harveen Kaur** reported in **AIR 2017 Supreme Court 4417**. The

Hon'ble Apex Court in the cited judgment said that, where Court dealing with the matter, if a case is made out to waive statutory period under Section 13-B(2), it can do so after considering the following:

“(i) statutory period of six months specified S.13-B(2), in addition to statutory period of one year under S. 13-B(1) of separation of parties is already over before first motion itself;

(ii) all efforts for mediation/conciliation including efforts in terms of Order XXXIIA, Rule 3, CPC/S. 23(2) of the Act/ S.9 of Family Courts Act to reunite parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

(v) waiting period will only prolong their agony.”

. As stated above, the learned trial Judge declined to waive the cooling period for non-fulfillment of condition no. (ii),

reproduced hereinabove.

6. The parties to the petition, have filed an application, duly verified by them, to state, that the parties were referred to mediation by this Court vide order dated 6th April, 2021. Accordingly, both and their respective lawyers had appeared before the Mediator and after mediation parties resided to get separated. The Paragraph No.3 of the application suggests that the parties have entered and executed the consent terms, which were placed on record of Hindu Marriage Petition No. 17/2021.

7. In the case of Amardeep (supra), the Hon'ble Apex Court has held that the period mentioned in Section 13-B(2) is mandatory but directory and therefore in exercise of the discretion in the facts and circumstances of the case, in my opinion, there is no possibility of parties resuming cohabitation.

8. In consideration of the facts aforesaid, statutory period,

contemplated under Section 13-B(2) of the Hindu Marriage Act, is waived.

9. That for the reasons stated above, the impugned order dated 23rd February, 2021 is set aside. Resultantly, the application below Exhibit-7 in H.M.P. No. 17/2021, pending on the file by the learned Civil Judge, Senior Division, Gangakhed, is allowed.

10. Rule made absolute in the aforesaid terms. Petition is allowed and disposed of.

(SANDEEP K. SHINDE, J.)

Najeeb...