

BDP-SPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO.93737 OF 2020**

Mrs Kovelamudi Kanika Dhillon
@ Kanika Dhillon

..... Petitioner
(Original Petitioner No.2)

V/s

Mr. Kovelamudi Surya Prakash Rao
@ Prakash Kovelamudi

..... Respondent
(Original Petitioner No.1)

Mr. Kamana Kapoor for the Petitioner.

Mr. Abhineet Pange a/w Ms. Radhika Luthria i/b Anand & Anand
Khimani for the Respondent.

Mr. A.B. Kadam, AGP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE : 26th October, 2020

P.C.

1] Parties to the Petition were married on 15th August, 2014 which was duly registered with the Office of District Registrar, Hyderabad (South) on 6th September, 2014. A joint Petition was tendered by the parties for divorce by mutual consent pursuant to the provisions of Section 13B of the Hindu Marriage Act, 1955. The said proceedings being Petition No.F-1023 of 2020 initiated before the Family Court, Bandra, was accompanied with the application for waiving statutory

period provided under Section 13B(2) of the Hindu Marriage Act, 1955. The said application was duly signed by the parties to the Petition and duly affirmed.

2] Vide order impugned dated 9th September, 2020 passed below Exhibit-7 i.e. Application for waiving statutory period, I am informed that the said prayer came to be rejected. As such this Petition.

3] The learned Counsel for the Petitioner so also for Respondent submit that parties are staying separately since December 2018 till date and are independently leading their lives. They are unable to live together. They have mutually agreed to end the marriage and as such, proceedings under Section 13B of the Hindu Marriage Act came to be initiated on 4th August, 2020.

4] The learned Counsel for the Petitioner has invited attention of this Court to the specific pleadings that the Petitioner is carrying pregnancy from another person with whom she intends to settle by performing marriage and that being so, there is urgency in the matter. It is further agreed between the parties that the Respondent shall give

his residential house to the Petitioner on such terms as are settled in between them as narrated in para 6(d) of the Consent Terms filed before the Family Court. The learned Counsel for the Respondent-husband has consented for the submissions made by the learned Counsel for the Petitioner and submitted that he is equally supporting the case of the Petitioner for waiving the statutory period.

5] According to him, considering the period for which the parties have lived together after marriage, pendency of litigation, status of the Petitioner of carrying pregnancy from another person with whom she intends to settle after performing marriage with him, the fact that the parties are residing separate for last about more than two years and also the parties having already attended councilor, it would be appropriate to allow the Petition by quashing the impugned order and statutory period be waived.

6] Perused the order impugned so also the judgment delivered by the Apex Court in the matter of *Amardeep Singh vs. Harveen Kaur* delivered in Civil Appeal No.11158 of 2017 (Arising out of Special Leave Petition (Civil) No. 20184 of 2017). The Apex Court in its

judgment in the matter of *Amardeep* cited supra in paras 15, 16, 17, 18 and 21 has observed thus :-

“15] We have given due consideration to the issue involved. Under 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 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 rethink so that the court grants divorce by mutual consent only if there is no chance for reconciliation.”

“16] 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.”

“17. 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. Singhs Principles of Statutory Interpretation (9th Edn., 2004), has been cited with approval in Kailash verus Nanhku and ors. 15 as follows:-

15(2005) 4 SCC 480 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-matter 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 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, namely, that 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.”

18] 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 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.”

“21. 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.”

7] It is further informed by both the learned Counsel that aforesaid legal position is still holding the field and has not undergone any change. In the aforesaid backdrop, it will be appropriate in fitness of things, particularly having regard to the medical/health condition of the Petitioner, to allow the joint application moved for waiving the period as specified under Section 13B of the Hindu Marriage Act. The joint request for waiver of statutory period under Section 13B of the Hindu Marriage Act is allowed by quashing and setting aside the order impugned.

8] For the aforesaid reasons, Application moved by the parties to the Petition at Exhibit-7 before the Family Court stands allowed in terms of prayer clause B. Let the Family Court decide the application for divorce as expeditiously as possible and if required by directing parties to attend the Family Court Proceedings physically or through video conferencing as it deems fit in the facts and circumstances of the case.

9] Petition stands allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)