

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 118/2022

Sheela Dhobi

----Petitioner

Versus

Satish

----Respondent

For Petitioner(s) : Mr. Naresh Singh for
Mr. Rakesh Arora
For Respondent(s) : Mr. V. K. Bhadu
Both through VC

JUSTICE DINESH MEHTA

Order

17/01/2022

1. This writ petition has been preferred on behalf of the petitioner being aggrieved with the order dated 16.12.2021 passed by the Family Court, Bhilwara (for short 'the Court below') in Suit No. Nil/2021, whereby the joint application filed by the petitioner and the respondent (hereinafter "parties") for waiver of six months period prescribed under Section 13-B(2) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') has been dismissed.

2. Mr. Bhadu, learned counsel for the respondent, submitted that the respondent is also aggrieved with the order impugned and this writ petition has been filed with the consent of the

respondent. Learned counsel submitted that he has no objection if the relief prayed for in this writ petition is granted.

3. Brief facts of the case are that the marriage of the parties was solemnized as per Hindu customs on 25.11.2003 in Mandalgarh, Bhilwara. It appears that soon after the marriage, the relations of the parties became strained and both of them have been residing separately from last four years.

4. Despite the best efforts of the parties to restore conjugal relations and in spite of regular counselling by their near relatives, the matrimonial dispute between them could not be settled and therefore the parties jointly filed an application under Section 13-B of the Act of 1955 seeking divorce by mutual consent before the court below on 03.12.2021.

5. The court below registered the said application and fixed the next date as 20.01.2022 for counselling of the parties.

6. In the meantime, the parties preferred a joint application praying for waiver of six months' statutory period specified under Section 13-B(2) of the Act of 1955. Arguments on the said application were heard and the court below dismissed the said application vide its order dated 16.12.2021.

7. Being aggrieved with order dated 16.12.2021, the present writ petition has been preferred before this Court.

8. Learned counsel for the parties have submitted that both, the petitioner and the respondent are educated persons and both of them have decided to end their marriage by mutual consent after due deliberations. It is also submitted that the decision by the parties to end their marriage has not been taken in a hurry and reconciliation between the parties is highly unlikely. It is further submitted that the conditions set out in the case of

Amardeep Singh Vs. Harveen Kaur, reported in (2017) 8

SCC 746, under which statutory period of six months, as specified under Section 13-B(2) of the Act of 1955, can be waived are fulfilled in the present case and the court below has erred in refusing waiver of the six months' statutory period.

9. Learned counsel for the parties have therefore jointly prayed that the order impugned be set aside and the court below be directed to condone or waive the statutory period specified under Section 13-B(2) of the Act of 1955.

10. Heard learned counsel for the parties and perused the impugned order.

11. The Hon'ble Supreme Court in ***Amardeep Singh's case (supra)*** has held as under :-

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

i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(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 32-A 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 court concerned.

20. Since 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."

12. After taking into consideration the facts of the present case, I am of the opinion that the conditions set out by the Hon'ble Supreme Court in **Amardeep Singh's case** (supra) are fulfilled in the present case.

13. In light of the facts and circumstances of the case, particularly the fact that the parties are sufficiently educated and are aware of their rights – the respondent (husband) is running a shop also; as they have mutually decided to end their matrimony finding no hope/chance of reconciliation, I am of the opinion that their application for waiver of the statutory period of six months specified under Section 13-B(2) of the Act of 1955 deserves acceptance.

14. Hence, this writ petition is allowed. The impugned order dated 16.12.2021 passed by the Court below is set aside and their application filed by the parties for waiver of the statutory period of six months specified under Section 13-B(2) of the Act of 1955 is, hereby allowed. The statutory period of six months specified under Section 13-B(2) of the Act of 1955 is hereby waived in exercise of extraordinary powers available to this Court by virtue of Article 226 of the Constitution of India.

15. The parties are directed to appear before the court below on 20.01.2022, whereafter the concerned Family Court will pass decree of divorce in accordance with law.

(DINESH MEHTA),J

121-A.Arora/-

RAJASTHAN HIGH COURT



सत्यमेव जयते