



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF AUGUST, 2023

PRESENT

THE HON'BLE MR JUSTICE G.NARENDAR

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO.3125 OF 2023 (FC)

BETWEEN:

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signed by
RUPA V
Location:
HIGH COURT
OF
KARNATAKA

...APPELLANTS

(BY SRI. VARDHAMAN V. GUNJAL, ADVOCATE)

AND:

NIL

...RESPONDENT



THIS MFA IS FILED UNDER SECTION 39 OF THE SPECIAL MARRIAGE ACT PRAYING TO SET ASIDE THE ORDER DATED 25.03.2023 PASSED IN M.C.NO.1363/2023 ON THE FILE OF THE IV ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, **VIJAYKUMAR A. PATIL J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed under Section 39 of the Special Marriage Act, 1954 against the order dated 25.03.2023 passed in M.C.No.1363/2023 by the VI Additional Principal Judge, Family Court, Bengaluru (for short, 'the Family Court') by which the application in I.A.No.3 filed by the petitioners under Section 28(2) of the Special Marriage Act, 1954 (for short, '**the Act**') was dismissed.

2. Brief facts giving rise to filing of this appeal are that the appellant Nos.1 and 2 are Hindus, however they have registered their marriage on 16.11.2022 in the Office of the Registrar of Marriage under the provisions of Special Marriage Act, 1954. It is averred that both the appellants have completed the Bachelor of Engineering degree,



employed at Bengaluru and with the consent of both the appellants, their marriage was solemnized and registered. However, immediately after the marriage, the appellants have realized that they have some personal differences, strong likes and dislikes and they could not find any amicable solution for the differences and there was no compatibility between the parties. Hence, the appellants have decided to file a petition under Section 28 of the Act seeking prayer for dissolution of marriage registered between them on 16.11.2022 by mutual consent. The appellants have filed the petition under Section 28 of the Act on 24.02.2023. The Family Court has registered the petition as M.C.No.1363/2023.

3. The appellants have filed an application under Section 28(2) of the Act seeking to grant leave by reducing the period of one year of cooling off period by accepting the petition for divorce by mutual consent by exempting one year cooling period. The Family Court vide order dated 25.03.2023 has rejected the said application.



4. Sri.V.V.Gunjal, learned counsel appearing for the appellants submits that the Family Court has failed to exercise discretion vested in it under Section 28 of the Act for waving off the cooling period. It is submitted that the parties and their respective family members have tried their best to resolve the dispute amicably and tried to unite the appellants, however, their relationship has become strange and they have decided to live separately. It is further submitted that both the appellants, after detailed discussion with their parents and well-wishers, have come to the conclusion that there is no compatibility between them and they have decided to concentrate on their career. Hence, filed the petition seeking dissolution of marriage by mutual consent. However, the Family Court, without appreciating the hardship and prejudice that would be caused to the parties, has proceeded to reject the application.

5. Learned counsel for the appellants has placed reliance on the decision of the learned Single Judge of this



Court dated 05.10.2020 passed in W.P.No.10601/2020 and submits that the learned Single Judge of this Court, considering the earlier decision of the Hon'ble Supreme Court, has allowed the petition holding that the stipulation under Section 28 of the Act is a directory not a mandatory. Hence, he seeks to allow the appeal by setting aside the impugned order passed by the Family Court by directing the Family Court to accept the petition for dissolution of marriage by mutual consent.

6. We have heard the learned counsel for the appellants, perused the memorandum of appeal and Family Court records.

7. Both the appellants have filed the petition before the Family Court under Section 28 of the Act seeking to dissolve their marriage solemnized and registered on 16.11.2022 by passing decree of divorce by mutual consent along with the petition they have filed application under Section 28(2) of the Act seeking prayer



to waive off the cooling period, which was considered and rejected by the Family Court.

8. Before considering the issue on hand, it would be useful to refer the decisions of Hon'ble Supreme Court; in the case of ***Amardeep Singh vs. Harveen Kaur*** reported in **(2017) 8 SCC 746**, the Hon'ble Supreme Court at paragraph No.19 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.

9. The Hon'ble Supreme Court in the case of ***Amit Kumar v. Suman Beniwal*** reported in **2021 SCC OnLine SC 1270** at paragraph Nos.17, 18 and 19 has held as under:

17. Legislature has, in its wisdom, enacted Section 13B (2) of the Hindu Marriage Act to provide for a cooling period of six months from the date of filing of the divorce petition under Section 13B (1), in case the parties should change their mind and resolve their differences. After six months if the parties still wish to go ahead with the divorce, and make a motion, the Court has to grant a decree of divorce declaring the marriage dissolved with effect from the date of the decree, after making such enquiries as it considers fit.

18. The object of Section 13B(2) read with Section 14 is to save the institution of marriage, by preventing hasty dissolution of marriage. It is often said that "time is the best healer". With passage of time, tempers cool down and anger dissipates. The waiting period gives the spouses time to forgive and forget. If the spouses have children, they may, after some time, think of the consequences of divorce on their children, and reconsider their decision to separate. Even otherwise, the cooling period gives the couple time to ponder and reflect and take a



considered decision as to whether they should really put an end to the marriage for all time to come.

19. Where there is a chance of reconciliation, however slight, the cooling period of six months from the date of filing of the divorce petition should be enforced. However, if there is no possibility of reconciliation, it would be meaningless to prolong the agony of the parties to the marriage. Thus, if the marriage has broken down irretrievably, the spouses have been living apart for a long time, but not been able to reconcile their differences and have mutually decided to part, it is better to end the marriage, to enable both the spouses to move on with the life.

10. Keeping in mind the enunciation of law laid down by the Hon'ble Supreme Court referred supra, it is not in dispute that the very object of providing cooling period for filing of the petition and further period of six months from the date of filing the petition is with an object to see that the parties to the proceeding can change their mind and resolve their differences, if after a period of six months, the parties decide to go ahead with divorce, make a motion before the jurisdictional Court so that it can consider the case on its merits. The Hon'ble Supreme Court has clearly held that the period mentioned in the statute is not mandatory but it is a directory in nature,



however, the Courts while exercising the discretion is required to look into the facts and circumstances of each case as to whether the parties to the proceedings are likely to reunite and resume the cohabitation or in the alternate proceed to consider the case on its merits.

11. In the instant case, both the appellants are Engineering Graduates and working in private companies at Bengaluru. The pleadings in the petition as well as the application for seeking waiver of cooling period makes it clear that the parties have realized that their personality differences are found and there are strong likes and dislikes, despite making best efforts to reconcile, they have decided to part away from the institution of marriage without making any allegation or claims against each other. On close perusal of the pleadings and evidence on record, it is evident that the parties as well as the family members have tried their best to bring reunion between the appellants, however, their efforts went in vain. The parties to the proceedings are between the age group of



32 to 37 years and they have specifically averred that they intend to concentrate on their career and decided to move on in their respective life. The said decision of the appellants is conscious decision and the parties are quite mature about the consequences of the said decision. In the facts and circumstances narrated above, this Court is of the considered view that the possibilities of reconciliation between the appellants are bleak. Hence, it would be appropriate to exercise discretion for waiving off the cooling period by permitting the appellants to move the petition for dissolution of marriage by mutual consent.

12. In view of the above, it would not be appropriate for the parties to wait unnecessarily for a further period. Any further period would only add to their agony. Hence in the interest of justice, it would be appropriate to waive off the statutory period by directing the Family Court to consider the case of the appellants for dissolution of marriage by mutual consent on its merits and in accordance with law.



13. For the aforementioned reasons, we pass the following :

ORDER:

- i. This appeal is ***allowed.***
- ii. The impugned order dated 25.03.2023 passed on I.A.No.3 in M.C.No.1363/2023 by the VI Additional Principal Judge, Family Court, Bengaluru is quashed and the said I.A.No.3 is allowed by waiving of the statutory period as contemplated under Section 28 of the Special Marriage Act.
- iii. The appellants are granted liberty to move the Family Court along with a certified copy of this order and the Family Court is directed to consider M.C.1363/2023 on its merits and in accordance with law and pass appropriate orders.

No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

BSR