

**High Court of Madhya Pradesh, Jabalpur**  
**Bench at Indore**

**BEFORE**  
**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 19<sup>TH</sup> OF SEPTEMBER, 2022**

**Miscellaneous Petition No.4135/2022**

Between: -

Vaibhav Pancholi

(By Mr. Nilesh Sharma, Advocate)

.....PETITIONER

AND

Smt. Priya

(By Ms. Smriti Razadan, Advocate)

.....RESPONDENT

.....

This **petition** coming on for orders this day, the court passed the following:

**ORDER**

Heard finally, with the consent of the learned counsel for the parties.

This petition has been filed by the petitioner under Article 227 of the Constitution of India against order dated 05.08.2022 (Annexure P/4), passed in Hindu Marriage Case No.1406/2022 by the learned Principal Judge, Family Court, Indore (MP) whereby a

joint application filed by the parties herein to waive the mandatory cooling off period of six months' time, as provided under Section 13-B (2) of the Hindu Marriage Act, 1955 (herein after referred to as the Act) has been rejected.

2. Admittedly, the petitioner and the respondent's marriage was solemnized on **10.02.2020**, and they are living separately from **13.06.2021** whereas an application under Section 13-B of the Act for divorce by "mutual consent" has been filed on **27.06.2022** (Annexure P/1). Thereafter, a joint application to waive off the cooling period of six months period was filed on **20.07.2022** (Annexure P/3), wherein it was mentioned that the petitioner Vaibhav Pancholi is a Software Engineer and he is due to leave India on a short notice and since both the parties have already settled their disputes and the respondent has also withdrawn all the cases levelled by her against her husband (petitioner herein), an application to waiving off the cooling period of six months was filed. The aforesaid application came to be dismissed by the Family Court vide its order dated 06.08.2022, relying upon the decision rendered by the Supreme Court in the case of **Amardeep Singh v. Harveen Kaur** reported as **2017 (8) SCC 746**.

3. Counsel has also relied upon a subsequent decision rendered by the Supreme Court in the case of **Amit Kumar v. Suman Beniwal** reported in **2021 SCC OnLine SC 1270**, wherein the Supreme Court has also interpreted the law laid down in the case of **Amardeep Singh v. Harveen Kaur** (supra); and in para 22, 27 and

28 of the said decision, the Supreme Court has held, as under: -

**“22.** The Family Court, as well as the High Court, have misconstrued the judgment of this Court in Amardeep Singh v. Harveen Kaur (supra) and proceeded on the basis that this Court has held that the conditions specified in paragraph 19 of the said judgment, quoted hereinabove, are mandatory and that the statutory waiting period of six months under Section 13B (2) can only be waived if all the aforesaid conditions are fulfilled, including, in particular, the condition of separation of at least one and half year before making the motion for decree of divorce.

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**27.** For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13B (2) of the Hindu Marriage Act, the Court would consider the following amongst other factors: -

- (i) the length of time for which the parties had been married;
- (ii) how long the parties had stayed together as husband and wife;
- (iii) the length of time the parties had been staying apart;
- (iv) the length of time for which the litigation had been pending;
- (v) whether there were any other proceedings between the parties;
- (vi) whether there was any possibility of reconciliation;
- (vii) whether there were any children born out of the wedlock;
- (viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.

**28.** In this Case, as observed above, the parties are both well-educated and highly placed government officers. They have been married for about 15 months. The marriage was a non-starter. Admittedly, the parties lived together only for three days, after which they have separated on account of irreconcilable differences. The parties have lived apart for the entire period of their

marriage except three days. It is jointly stated by the parties that efforts at reconciliation have failed. The parties are unwilling to live together as husband and wife. Even after over 14 months of separation, the parties still want to go ahead with the divorce. No useful purpose would be served by making the parties wait, except to prolong their agony.”

(Emphasis supplied)

4. Thus, it is submitted by the learned counsel for the parties that in the pressing circumstances, in which the parties have found themselves, the application for waiving the cooling off period of six months has been filed and as has already been held by the Supreme Court that even the conditions as enumerated in the case of **Amardeep Singh** v. **Harveen Kaur** (supra) are not mandatory and the Court can also exercise its discretion taking into account the other circumstances as well. It is also submitted that a sum of Rs.11 lacs as permanent alimony has also been given by the petitioner to the respondent by way of a bank draft in her name.

5. On due consideration of the submissions and perusal of the documents filed on record, including the decision rendered by the Supreme Court in the case of **Amit Kumar** v. **Suman Beniwal** (supra), this Court finds force with the contentions raised by the learned counsel for the parties and considering the fact that the parties are already living separately since last more than one year and two months (14 months), the respondent wife has already withdrawn all the cases lodged against the petitioner and has also received a bank draft of Rs.11 lacs towards the permanent alimony,

this Court is of the considered opinion that the application to waive the cooling off period of six months ought to have been allowed.

6. Accordingly, the impugned order dated 05.08.2022 (Annexure P/4) passed in Hindu Marriage Case No.1406/2022 by the learned Principal Judge, Family Court, Indore (MP) is hereby set aside and the joint application dated 20.07.2022 (Annexure P/3) filed by the parties to waive the cooling off period of six months is hereby **allowed** and the learned Judge of the Family Court is requested to proceed further, as expeditiously as possible.

7. The parties are directed to remain present before the Family Court, Indore on **27.09.2022**.

8. Accordingly, Miscellaneous Petition No.4135/2022 stands **disposed of**.

**(Subodh Abhyankar)**  
**Judge**