IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9369 OF 2024

1. Sneha Akshay Garg
Age: 29 Years, Occ: Service
Residing at: C/o Satish General
Store, House No. 420/2197,
Sant Tukaram Nagar,
Near Badminton Hall, Pimpri,
Pune – 411 018

2. Akshay Sunil Garg
Age: 28 years, Occ: Service
R/o sr. no. 278112, JK Niwas,
Sathe Wasti, Dhanori Road,
Lohagaon, Pune – 411 047 ….Petitioners

Vs.

Nil .....Respondent

Mr. Narayan Rokade a/w Mr. Siddharth Agrawal, Mr. Udaysinh Deshmukh, Mr. Abhang Suryawanshi for the petitioners

CORAM : GAURI GODSE, J.

DATE : 25th JULY 2024

ORAL JUDGMENT:

1. Heard. Rule. Rule made returnable forthwith. By consent of the

parties, taken up for final disposal.

2. This petition takes exception to the order passed by the Family Court, Pune, on 4th June 2024, rejecting the petitioners' application for waiver of the cooling off period provided under section 13–B of the Hindu Marriage Act, 1955 ('the said Act'). The petitioners got married on 18th July 2021 as per Hindu rituals in Pune. It is the petitioners' case that there were differences between them after a period of one year, and hence, they started residing separately on 10th October 2022. Though reconciliation attempts were made by their well-wishers, friends and families, they failed, and ultimately, they decided to seek a divorce by mutual consent. In terms of the amicable settlement between the parties, petitioner no. 2 agreed to pay an amount of ₹10 lakhs towards permanent alimony. Accordingly, petitioners filed a petition for dissolution of their marriage by mutual consent in the Family Court at Pune on 13th March 2024 and the same was registered on 20th March 2024. Since the parties had already been residing separately since 10th October 2022, they also filed an application for waiver of the six months period and requested for a decree for the

dissolution of their marriage. The said application is rejected by the Family Court on 4th June 2024. Hence, this petition.

3. Learned counsel for the petitioners submitted that in spite of making attempts, parties were unable to reconcile their differences, so they decided to apply for dissolution of their marriage. He further submitted that it was impossible for the parties to reside together. Hence, they applied for a waiver of the statutory period. He further submitted that the learned Judge of the Family Court has rejected the application on the ground that there was no case made out to exercise the discretion to waive the statutory period of six months. However, he submits that the learned Judge has not given any reasons for rejecting the application.

4. Learned counsel for the petitioner relied upon the decision of the Apex Court in the case of ***Amardeep Singh Vs Harveen Kaur***[1] and submitted that considering the legal principles laid down by the Apex Court, the learned Judge of the Family Court ought to have allowed the application for waiving the waiting period of six months. He also

1 **(2017) 8 Supreme Court Cases 746**

relied upon the decision of this Court in the case of ***Manjiri w/o Bhushan Raut and another***[2]. He submits that by relying upon the decision of the Apex Court, this Court had allowed the petition in similarly situated facts and waived the period of six months. Learned counsel for the petitioners has also relied upon the decision of this Court in the case of ***Pratik Rajendra Kutte and another Vs State of Maharashtra through Law and Judiciary Dept***[3] where a similar view was taken by relying upon the decision of the Apex Court in the case of ***Amardeep Singh***. Learned counsel for the petitioners submitted that this Court, in the case of ***Pratik Kutte***, has allowed the application for waiver and, instead of relegating the parties to the Family Court, granted dissolution of marriage by directing the Family Court to draw a decree for divorce.

5. Learned counsel submits that in view of the facts of the present case, the decision in the case of ***Pratik Kutte*** would squarely apply to the present case. He submits that there is no possibility of any reconciliation; hence, the application for waiver be allowed, and the

2 Writ Petition No. 3146 of 2022 dated 10th June 2022
3 Writ Petition No. 4747 of 2024 dated 19th June 2024

parties be granted an order of dissolution of their marriage.

6. In view of the aforesaid, the petition was taken up for final disposal. The learned Judge of the Family Court held that merely because the parties have been residing separately for the last 22 months, the same cannot be a ground to waive the statutory waiting period. The learned Judge was of the opinion that unless there is a ground to waive the statutory waiting period, the discretion to waive the waiting period cannot be exercised only because parties are willing to dissolve their marriage by mutual consent.

7. The guiding principles while dealing with an application to waive the statutory waiting period are settled by the Hon'ble Supreme Court, in the case of ***Amardeep Singh,*** which reads 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."

8. The guiding principles in the Supreme Court's decision in the case of ***Amardeep Singh*** need to be correctly understood and applied to achieve the object of the provision of Section 13-B of the said Act. The Hon'ble Supreme Court has observed that the object of the waiting period was to provide a safeguard against a hurried decision, if there was otherwise a possibility of reconciliation. Thus, the waiting period is a precautionary provision to avoid any injustice to any party and rule out the possibility of reconciliation. Thus, the purpose of the waiting period needs to be correctly understood while deciding the application for a waiver. Seeing the rapid changes in an evolving society, the judiciary would play a vital role in assisting the parties seeking the dissolution of their marriage by mutual consent. Thus, keeping in mind the changing social conditions, a realistic approach

needs to be adopted.

9. Normally, we come across cases where parties continue to fight, though there is no possibility of reconciliation. In such cases, the parties are encouraged to explore the possibility of an amicable settlement and are even referred for mediation so that they can put an end to the litigation. However, when the parties apply for divorce by mutual consent, they have taken a conscious decision to separate and thus have shown a reasonable approach. Such a decision shows that they have decided to move ahead, and thus, there is every chance of rehabilitation. The newly married couple not being able to reside together, or a couple married for quite some time is unable to continue to stay together for various reasons, itself would be a mental agony. Thus, once the Court is satisfied that the parties have taken a conscious decision to separate and move ahead and that there is no possibility of reconciliation, the Court should adopt a realistic approach and exercise the discretion to waive the waiting period. Hence, it is the duty of the Court to assist the parties by exercising the discretion to waive the cooling off period and free them from the stress of their

application for divorce remaining pending.

10. In the present case, I have interacted with both petitioners who are present before me today. On making a specific query with regard to the possibility of reconciliation, both the petitioners reiterated that they are unable to sort out their differences and have made a conscious decision to separate. They further submitted that in spite of making several efforts, they were unable to reconcile their differences and would not be able to stay together. The petitioners further inform that they both are well settled in their independent professions, and the pendency of the petition is causing mental agony. Hence, they request that the cooling off period be waived and an order for dissolution of their marriage be also passed by this Court.

11. Petitioner no. 1 confirms that as per the mutual agreement between the parties, she has received a lump amount of ₹10 lakhs towards permanent alimony. She further submits that she has no claim or any grievance against petitioner no. 2. Petitioner no. 2 also confirms that he has no grievance against petitioner no. 1 and that the order be passed for dissolution of their marriage.

12. Petitioner no. 1 is 29 years of age, and petitioner no. 2 is 28 years of age. As stated by them, both are independently well-settled in their profession. On interacting with the petitioners and considering the reasons stated by them in the application for waiver of the cooling off period, I am satisfied that the parties are unable to reconcile and have, therefore, decided to separate. Thus, I am satisfied that the pendency of the petition is causing mental agony and that there is no point in keeping the marriage petition pending. In view of the aforesaid, I am also satisfied that there is no possibility of any reconciliation. Thus, to avoid any further loss of time, I am not inclined to relegate the parties to the Family Court for passing the order on the main application under section 13–B(1) of the said Act.

13. Considering the facts of the case, the view taken by this Court in the decision of ***Pratik Kutte*** would squarely apply to the present case. This Court, in the case of ***Pratik Kutte***, has observed in paragraphs 9, 10 and 11 as under;

> "9……..In view of the order rejecting the application for waiver, the petitioners' application under section 13-B(1)

for dissolution of their marriage has remained pending before the Family Court. Considering the aforesaid, I am satisfied that the petitioners are entitled to waiver of the waiting period of six months provided under section 13-B(2) of the said Act.

10…...Hence, considering the facts of the case, I find it appropriate to take a pragmatic view and not send the parties to the Family Court only for the purpose of passing a final order. If only for a technical purpose, the parties are relegated to the Family Court, the very object of making an application for dissolution of marriage under section 13-B(1) and the application for a waiver under section 13-B(2) would be frustrated".

11. Hence, I find it fit to exercise the jurisdiction under Article 227 of the Constitution of India to correct the impugned order by waiving the waiting period and also pass further orders for the dissolution of the marriage….."

14. For the reasons stated above, the following order is passed:

ORDER

(I) The impugned order dated 4th June 2024 passed

below Exhibit 8 by the learned Judge, Family Court No. 2 Pune in Petition No. F-464/2024 is quashed and set aside.

(II) Application at Exhibit 8 in Petition No. F–464/2024 filed before the Family Court No. 2, Pune, for six months waiver under section 13–B(2) of the said Act is allowed, and the six months waiting period is waived.

(III) The application for dissolution of marriage under Section 13–B of the said Act in Petition No. F–464/2024 filed before Family Court No. 2, Pune is allowed.

(IV) Marriage solemnized between the parties on 18th July 2021 is dissolved.

(V) The Family Court, Pune, shall draw a decree for divorce in terms of the dissolution of marriage granted by this order.

(VI) The concerned Judge of the Family Court at Pune shall issue necessary directions for drawing up the decree in terms of this order upon the production of a certified copy of this order without insisting on the parties' presence.

(VII) The writ petition is allowed in the aforesaid terms.

15. Rule made absolute in the above terms.

[GAURI GODSE, J.]