



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

ON THE 30th OF AUGUST, 2024

MISCELLANEOUS PETITION No. 4933 of 2024

SUSHANT KUMAR SAHU

Versus

SMT MOHINI SAHU

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Appearance:

Shri Vivek Agrawal – Advocate for the petitioner.

Shri Abhishek Tiwari – Advocate for the respondent.

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ORDER

This Miscellaneous Petition under Article 227 of Constitution of India has been filed seeking following relief(s):-

- i. To set aside the order impugned dated 27.08.2024 (**P/3**) and allowed the application under section 13-B of Hindu Marriage act for divorce and direct the Family court Principal Judge Jabalpur to drawn the decree as per terms of their application after waiving the statutory period of six month as per section 13-B of HMA.
- ii. Any other relief which this Hon'ble Court may deems fit and proper, including the cost of the litigation.

2. It is submitted by counsel for petitioner that petitioner and respondent got married to each other. They are residing separately from the year 2017. They moved an application under Section 13-B of Hindu Marriage Act for dissolution of their marriage dated 30/01/2015. An



application under Section 13-B of Hindu Marriage Act was filed on 01/07/2024 and their statements were recorded on 02/07/2024. The Trial Court has fixed the case for 10/01/2025 for recording of their second statements. It is submitted by counsel for petitioner that Supreme Court in the case of **Amardeep Singh Vs. Harveen Kaur** reported in **(2017) 8 SCC 746** has held that the cooling off period of six months is not mandatory but it is directory in nature and therefore, petitioner moved an application for waiver of the cooling off period which has been rejected by the trial Court.

3. Challenging the order passed by Court below, it is submitted by counsel for petitioner that since petitioner is the resident of Bhopal whereas the case is pending at Jabalpur, therefore it is difficult for him to appear before the trial Court very frequently and thus, the Trial Court should have waived off the cooling period of six months.

4. Heard learned counsel for the petitioner.

5. For waiving off the statutory period under Section 13-B(2) of Hindu Marriage Act, following conditions are to be satisfied:-

- (i) All efforts of mediation and conciliation including efforts in terms of Order 32-A Rule 3 CPC, Section 23(2) of CPC and 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;
- (ii) The parties have genuinely settled their differences including alimony, custody of child or any other pending issues;



- (iii) The waiting period will only prolong their agony;
- (iv) The parties have decided to move ahead in their life.

6. The application under Section 13-B(1) of Hindu Marriage Act was filed on 01/07/2024. It is not a case that the divorce petition was already pending for last more than 6 months. Even in the application filed under Section 13-B of Hindu Marriage Act, it has not been pleaded by petitioner that they have decided to move ahead in their life. The main ground which has been pleaded in the application is that since the parties are residing separately from 01/10/2017 and both the parties are required to stay out of station in connection with their work, therefore they are facing difficulty in attending the case. Even if the Trial Court is directed to take up the matter for second motion, still the parties will be required to appear.

7. Under these circumstances, inconvenience of the parties to appear before the Court cannot be a ground to waive off the cooling period. The basic purpose of making a provision for cooling period is to think over the decision of getting separated.

8. Under these circumstances, since petitioner has failed to make out a sufficient ground for waiver of cooling period, therefore Trial Court did not commit any mistake by rejecting the said application.

9. Petition fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

S.M.