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## CASE ANALYSIS: AMARDEEP SINGH V. HARVEEN KAUR

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Civil Appeal No. 11158 of 2017 (arising out of special leave petition [civil]  
no. 20184 of 2017) AIR 2017 SC 4417

### ABSTRACT

In the light of the break-down theory within the Hindu Marriage Act, 1955, the aim of this paper is to analyse the impact of the mandatory six-month cooling-off period under section 13B (2) of the Hindu Marriage Act, together with the invocation of jurisdiction under Article 142 of the Indian Constitution. The paper uses the case of *Amardeep Singh v. Harveen Kaur* to analyze the effectiveness of the measures taken to address the same. The following case exemplifies the Hon'ble Supreme Court's efforts to clarify and better balance the position of those parties who seek divorce by mutual consent and have no prospect of reconciliation.

## **Brief facts of the case**

The Appellant (Amardeep Singh) got married to the Respondent (Harveen Kaur) on 16th January 1994 in Delhi and have two children together. In 2008, they began to live separately due to conflicts between the two parties. Following that, the parties reached an agreement to settle all of their differences and pursue divorce by mutual consent in 2017. As per the settlement, the husband had to pay the wife a permanent alimony of Rs.2.75 crores. The Appellant husband handed over two cheques for Rs.50, 00,000/- in part payment of permanent alimony. The custody of the children was with the Appellant. On the 8th of May 2017, a civil suit was initiated before the Family Court of Tis Hazari Court, New Delhi wherein both parties' statements concerning the issue were recorded.

Subsequently, the parties requested a waiver of the six-month waiting term for the second motion, stating that they had been residing apart for more than eight years and that there was no prospect of their reconciliation. They laid emphasis on the fact that any further delay could jeopardize their odds of being rehabilitated. The parties asked the Hon'ble Supreme Court to adjudicate on whether the cooling-off period could be rescinded, based on prior verdicts.

## **Issues**

The following was the issue before the Court of Law:

- i) Whether the six-month waiting period specified in Section 13-B (2) of the Hindu Marriage Act, 1955 for an application for a decree of divorce on mutual consent is obligatory or can be waived by an apex court in extraordinary circumstances under Article 142 of the Constitution of India 1947.

## **Related Provisions**

*Article 142 of Constitution of India:*

It provides for discretionary power of the Hon'ble Supreme Court and states that “the court while exercising its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.”

*Section 13 B (2) of the Hindu Marriage Act 1955:*

The Hindu Marriage Act provides statutory grounds to dissolve a marriage. An amendment

was added to the Hindu Marriage Act in the year 1976, which contained the concept of divorce by mutual consent. However, section 13B (2) contains a restriction to divorce being granted before six months of time elapsing after filing for divorce with mutual consent.

### **Contention of the Appellant and Respondent**

In light of the above, it was contended by both parties that the court may invoke jurisdiction under Article 142 of the Indian Constitution to minimize the six-month timeframe stipulated under Section 13B (2) of the Hindu Marriage Act. Further, the parties placed reliance on the case of *Nikhil Kumar v. Rupali Kumar*<sup>1</sup>, where the Hon'ble Supreme Court waived the statutory period of six months under Article 142 of the Constitution, and the marriage was annulled.

### **Judgment and its Analysis**

While Section 13B (1)<sup>2</sup> is concerned with the requisite duration of severance, the petition's maintainability and thus the Court's jurisdiction, Section 13B (2)<sup>3</sup> establishes a "cooling-off period" or a six-month interval following the filing of a divorce petition in order to reconcile and eliminate remorse. This clause has been scrutinized by the judiciary over the years, and in some "exceptional cases," the Court has waived the "cooling-off period" under Article 142, which gives the Hon'ble Supreme Court of India a wide discretion to achieve comprehensive justice. Thus, until this landmark decision, the issue whether Section 13B (2) was mandatory or just procedural was not settled.

In the present case of *Amardeep Singh v. Harveen Kaur*, the Hon'ble Supreme Court held that the provision in the Hindu Marriage Act allowing a six-month cooling-off period is purely advisory and not mandatory in nature. The learned Amicus Curiae submitted that the waiting period enshrined under Section 13B (2) of the Act is directory and can be waived by the court where proceedings are pending, in exceptional situations.<sup>4</sup> Accordingly, if all conciliation efforts to reunite the parties have ceased, the parties have sincerely addressed their disputes, even in relation to alimony, and there is no possibility of re-establishing the union, the court in which the divorce proceedings are ongoing may exercise flexibility, based on the facts and circumstances in each case, and waive the specified timeframe.

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<sup>1</sup> (2016) 13 SCC 383

<sup>2</sup> Hindu Marriage Act, 1955, Sec. 13B (1)

<sup>3</sup> Hindu Marriage Act, 1955, Sec. 13B (2)

<sup>4</sup> AIR 2017 SC 4417 (para 13)

This significant ruling<sup>5</sup> also established the fundamental grounds that a court must consider while addressing cases of mutual consent divorce:

- i) The statutory duration under Section 13B (1) is mandatory, thus a period of one year and six months of the spouses living independently is essential before initiating the petition for divorce.
- ii) The spouses should formally have settled their disputes and reached amicable agreements on child custody, shared property, alimony, and other issues.
- iii) All attempts at alternative conflict settlement should have ended in failure, and there must be no potential of recovery in the foreseeable future.
- iv) The waiting period would impede forthcoming settlement.

If the aforementioned requirements are met, the court may waive the waiting period in its discretion.

Furthermore, the Court ruled that the parties might now participate in the proceedings through the medium of videoconferencing as well as allowing the representation of a party through close relations such as parents or siblings. This was done for the parties who were unable to physically be present in court owing to unforeseen circumstances.

### **Key takeaway in relation to relevant cases**

In courts, the requests for waiver of the cooling-off period under Section 13B (2)<sup>6</sup> has been a source of uncertainty. The cases that have arisen before the courts throughout the years have demonstrated the ambiguity of their legal position on the subject.

In the case of *Dineshkumar Shukla v. Smt. Neeta*<sup>7</sup> the High Court was in the view that if the parties have been litigating for a prolonged period of time and all attempts at reconciliation have failed, it will not be in the best interests of justice or in the spirit of the statute to refuse redress by mandating the waiting period. Similarly, in the case of *Poonam v. Sumit Tanwar*<sup>8</sup>, the court concluded that the discretion under Article 142<sup>9</sup> might be exercised where the marriage has broken down to the point of no restoration and any further attempt would only

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<sup>5</sup> AIR 2017 SC 4417

<sup>6</sup> Hindu Marriage Act, 1955

<sup>7</sup> AIR 2005 MP 106

<sup>8</sup> AIR 2010 SC 1384

<sup>9</sup> The Constitution of India

cause the parties concerned additional misery.

However, it is to be noted that the Hon'ble Supreme Court referred to the case of *Manish Goel v. Rohini Goel*<sup>10</sup>, in which a bench of two Hon'ble Judges of this court held that the court's judicial power under Article 142<sup>11</sup> could not be used to relinquish the statutory period of six months for the second motion under Section 13B, because doing so would be passing an order in violation of the statute.

Considering the above mentioned, the Hon'ble Supreme Court concluded that language alone is not always determinative in establishing whether a provision is mandatory or advisory. The court has the authority to dismiss the waiting period if the pertinent facts, conditions, and contentions of the parties to the case are fulfilled.

### **Conclusion and Recommendations**

We may deduce that there have been a few examples after this judgment in which the couple seeking for divorce was successful in getting the "cooling-off period" waived. For instance, in October 2018, a case featuring Justice Kurian Joseph and Justice S.K. Kaul dismissed the waiting period, allowing the couple to end the marriage amicably.<sup>12</sup> Further, another order was issued by Justice Sanjay Kumar, who overturned an August 6, 2020 order by a Mohali Additional District Court which rejected the plea of a couple's six-month statutory waiting period.<sup>13</sup>

All these instances demonstrate that the Hon'ble Supreme Court is determined to uphold the precedent established in *Amardeep Singh v. Harveen Kaur*. The judgment has brought in clarity and altered the landscape of divorce procedures in India.

#### *Recommendations:*

- i) Although the recent case has altered the circumstances of the cooling period provided in Section 13-B (2), it is still critical for the legislature to pass a comprehensive regulation. This will assist the courts in dealing with cases by

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<sup>10</sup>AIR 2010 SC 1099

<sup>11</sup> The Constitution of India, Art 142.

<sup>12</sup> 'SC allows couple to separate without waiting for six-month mandatory 'cooling-off' period' *The Hindu* (New Delhi , 16 October 2018). <https://www.thehindu.com/news/national/sc-sanctions-divorce-to-couple-without-six-months-cooling-off-period/article25237873.ece>

<sup>13</sup> Ajay Sutra, 'Cooling off period before divorce can be waived: HC' *The Times Of India* (New Delhi, 9 September 2020).<https://timesofindia.indiatimes.com/toireporter/author-Ajay-Sura-479201012.cms>

implementing predefined laws and would insure that no party is served unfairly.

- ii) The cooling period under Section 13B-(2) must be lowered further, as parties going through a divorce are already in a great deal of anguish. If the parties have been residing apart for a year or more with no attempts at reconciling, it is clear that the divorce is thoroughly thought through.