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

**BEFORE
HON'BLE SHRI JUSTICE ANAND PATHAK**

ON THE 5th OF FEBRUARY, 2024

MISC. PETITION No. 544 of 2024

BETWEEN:-

**SMT JASSI GUPTA W/O SHRI HIMANSHU GUPTA D/O
SHRI MUKESH KUMAR GUPTA, AGED ABOUT 32 YEARS,
OCCUPATION: HOUSEWIFE HOUSE NO 42, 7 NO
CHAURAHA KALPANA NAGAR MORAR GWALIOR
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI PALLAV TRIPATHI AND SHRI NIRMAL SHARMA -ADVOCATE)

AND

**HIMANSHU GUPTA S/O SHRI UMESH KUMAR GUPTA,
AGED ABOUT 33 YEARS, OCCUPATION: BUSINESS 613/01
PUKHTA BAZAR SARDAR GANJ JAHANGIRABAD
TEHSIL ANUP SHAHAR DISTRICT BULANDSHAHR U.P
(UTTAR PRADESH)**

.....RESPONDENT

(BY SHRI SAIYAD MOHAMMAD ALI - ADVOCATE)

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

ORDER

The present petition is preferred at the instance of petitioner, who
alongwith her spouse respondent namely Himanshu Gupta filed an application
under Section 13-B of Hindu Marriage Act, 1955 (hereinafter referred as to 'the
Act') before the Principal Judge, Family Court, Gwalior bearing case
No.1606A/2023 HMA which was dismissed by the Family Court vide
impugned order dated 04.01.2024.

2. Precisely stated facts of the case are that marriage of petitioner with

the respondent was solemnized on 21.01.2014 as per Hindu Ritual and Rites. After marriage, domestic incompatibility prevailed between the parties which led to filing of application under Section 13(B) of the Act seeking divorce by mutual consent.

3. Sole grievance of the petitioner and respondent is that the Court below without considering the material aspect and the request made by the parties, placed the matter on 17.06.2024 vide order dated 04.01.2024 by giving cooling period of 6 months. The impugned order is contrary to the mandate of the Apex Court in the case of **Amardeep Singh Vs. Harveer Kaur** reported in **2017 (8) SCC 746** wherein the Apex Court held that the period of six months as stipulated in Section 13-B of the Act be waived of if there is no possibilities of settlement and parties cannot be forced to suffer mental agony by way of waiting for further six months.

4. Learned counsel for the respondent is in unison at least in respect of provision stipulated under Section 13-B of the Act that waiting period between two motions be waived of as each of them want to get rid of relationship at the earliest. Thus, prayer for setting aside of impugned order passed by the Family Court has been made jointly by the parties.

5. Heard learned counsel for the parties and perused the documents appended thereto.

6. The Apex Court in the case of **Amardeep Singh (Supra)** has held as under:-

“Applying the above to the present petition, 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 13B(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 XXXIIA 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."

7. Since the parties have already decided to live separately, there are no chances of settlement between them and rest of the issues have already been settled by them, therefore, keeping the matter pending in order to give some cooling period is nothing but a futile exercise.

8. Considering the fact situation as well as the mandate of the Apex Court, the order impugned passed by the Family Court, Gwalior is hereby set aside. Matter is remanded back to the trial Court for taking fresh call over the facts situation of the case and thereafter pass the order in respect of the prayer made by the parties jointly for waiving of the period of six months for getting divorce. Parties are directed to appear before the Court below on dated 19.02.2024 wherein the Court below shall consider the application preferred jointly by the parties afresh in terms of the mandate of the Apex Court in the case of **Amardeep Singh (Supra)** expeditiously.

9. The petition stands **disposed of with the aforesaid directions.**

(ANAND PATHAK)

Ashish*

