NEUTRAL CITATION
2025:GUJHC:74569-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4404 of 2025

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Versus
NA

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Appearance:
POOJA D BASWAL(9601) for the Appellant(s) No. 1,2
MS BHAKTI M JOSHI(3820) for the Defendant(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 22/12/2025
ORAL ORDER
(PER : HONOURABLE MS. JUSTICE SANGEETA K. VISHEN)

With the consent of the learned advocates appearing for the respective parties, the captioned appeal, is taken up for final disposal. For the sake of convenience, parties are referred to as per their status in the Family Suit no.1054 of 2025.

2. The challenge in the captioned appeal, is the judgment dated 08.08.2025, passed by the learned Judge, Family Court, Ahmedabad in Family Suit no. 1054 of 2025**,** whereby, the application under Section 13B of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act of 1955”), is rejected on the ground that prescription of cooling-off period is not an empty formality, but a meaningful opportunity for reconciliation. It is also rejected on the ground of non-filing of the waiver application.

3. Ms Pooja D. Baswal, learned advocate, for petitioner no.1 and Mr Kartik Kumar Joshi, learned advocate for petitioner no.2 in Family

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Suit no. 1054 of 2025, have jointly submitted that the marriage of the parties took place on 09.12.2023 and since 17.01.2024, both, the husband and the wife are staying separately. It is submitted that the petitioner no. 2 has gone for his higher studies in U.K., however, he is proposing to settle there. Similarly, the petitioner no. 1, is settled in Ahmedabad, India and would like to pursue her career here. It is submitted that it is impossible for both the parties to reunite and hence, both the petitioners have jointly agreed for a mutual divorce as per the provision of the Act of 1955.

3.1 Examination-in-chief, Exhs.9 and 10 of both the petitioners are filed respectively, *inter alia,* expressing their desire of obtaining divorce by mutual consent. It is declared that it is difficult to maintain the marriage between the parties considering the likes and dislikes. Besides, it is also declared that the application filed for divorce by mutual consent is without any force, undue influence or coercion but it is independent and of free will. Even amount is fixed for alimony to be received by the petitioner no. 1 and the further declaration that she shall not claim any maintenance in future. It is also emphatically stated that both the parties are residing separately from January 2024. Similar such application is filed by the petitioner no. 2 through his power of attorney reiterating the contents and also expressing the desire to have a divorce with mutual consent.

3.2 It is further submitted by both the counsel that on 01.04.2025 i.e., almost after a period of more than one year, application under Section 13B of the Act of 1955, was filed seeking divorce with mutual consent and six months, got over on 01.10.2025. The learned Judge without waiting and offering an opportunity, passed the order dated 08.08.2025, rejecting the application on the ground that the application is premature in the absence of any application

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for waiver of the cooling-off period. It is submitted that, when second motion was moved on 24.07.2025, the course available to the Family Court was to have given an opportunity to the parties to file an application seeking waiver or else adjourn the matter. The learned Judge, instead has rejected the application. It is submitted that the parties, are *ad idem* and the petitioners shall file application, praying for waiving the cooling-off period. It is urged that let the Court below decide the same, in accordance with the provisions of the Section 13B of the Act of 1955.

3.3 It is jointly submitted that if an opportunity is offered to both the parties, they shall take appropriate steps to file an application seeking waiver and also see to it that the petitioner no. 2 himself files an application without acting through a power of attorney. It is therefore submitted that order may be quashed and set aside and the parties may be relegated to the Family Court, with a direction to the Family Court, to decide the application afresh.

4. Heard the learned advocates appearing for the respective parties and considered the documents made available on the record.

5. The undisputed facts are that on 09.12.2023, the marriage between the parties took place. It is also not in dispute that since 17.01.2024 both the parties are staying separately; the petitioner no. 1 at Ahmedabad and petitioner no. 2 at U.K. Both the petitioners are desirous of pursuing their careers in their respective fields at their respective places. The petitioner no. 1, at present, is desirous of settling at Ahmedabad and is not desirous of moving abroad. Similarly, the petitioner no. 2 at present, is desirous of settling at U.K. and not moving back to India in the near future. This discord, has led to the filing of the application under Section 13B of the Act

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of 1955, before the court below, on 01.04.2025. On 24.07.2025, the second motion was moved, however, the six months were getting over on 01.10.2025.

6. Apt would be the provisions of section 13B of the Act of 1955 which provides for divorce by mutual consent and it reads thus:-

> "**13B. Divorce by mutual consent.**
> (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.
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> (2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree."

7. It states that subject to the provisions of the Act, the petition for dissolution of the marriage by a decree of divorce may be presented to the concerned Court by both the parties to a marriage on the ground that they have been living separately for a period of one year or more and that they have not been able to live together and have mutually agreed that the marriage should be dissolved. Sub-section (2) provides for the cooling-off period of six months. It states that; on the motion of both the parties made not earlier than six months after the date of presentation of the petition as referred to in sub-section (1) and not later than eighteen months after the said dates, if the petition is not withdrawn, the Court shall on being satisfied, after hearing the parties and after making such inquiry, pass the decree of divorce declaring the marriage to be dissolved.

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7. It is well-settled that the six months period enumerated in Section 13B of the Act of 1955 is directory and not mandatory. The issue, is no longer *res integra.* Apt would be the judgment of the Apex Court in the case of *Amardeep Singh vs. Harveen Kaur* reported in (2017) 8 SCC 746, wherein, the following issue was considered and while dealing with the issue, in paragraphs 16 to 20, it is observed thus:-

> "Whether the provision of Section 13B of the Act of 1955 laying down cooling-off period of six months is a mandatory requirement or it is open to the family court to waive the same having regard to the interest of justice in an individual case."
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> 16. We have given due consideration to the issue involved. Under the traditional Hindu Law, as it stood prior to the statutory law on the point, marriage is a sacrament and cannot be dissolved by consent. The Act enabled the court to dissolve marriage on statutory grounds. By way of amendment in the year 1976, the concept of divorce by mutual consent was introduced. However, Section 13B(2) contains a bar to divorce being granted before six months of time elapsing after filing of the divorce petition by mutual consent. The said period was laid down to enable the parties to have a rethink so that the court grants divorce by mutual consent only if there is no chance for reconciliation.
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> 17. The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options. The amendment was inspired by the thought that forcible perpetuation of status of matrimony between unwilling partners did not serve any purpose. The object of the cooling off the period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh rehabilitation, the Court should not be powerless in enabling the parties to have a better option.
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> 18. In determining the question whether provision is mandatory or directory, language alone is not always decisive. The Court has to have the regard to the context, the subject matter and the object of the provision. This principle, as formulated in Justice G.P. Singh's "Principles of Statutory Interpretation" (9th Edn., 2004), has been cited with approval in Kailash versus Nanhkuand ors.15 as follows:
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> > "34....The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the

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context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oft-quoted passage Lord Campbell said: 'No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered."

"For ascertaining the real intention of the legislature', points out Subbarao, J. 'the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered'. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory."

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 13B(2), it can do so after considering the following :

i) the statutory period of six months specified in Section 13B(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.

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 concerned Court.

20. Since we are of the view that the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case

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where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."

8. The Apex Court while considering the object behind and provisions of the Act has held that the Court dealing with the matter if is satisfied that a case is made out to waive the statutory period under Section 13B(2), it can do so after considering the parameters indicated in paragraph 19. The Apex Court, has also observed that it would be open to the parties to file an application seeking waiver of the cooling-off period one week after the first motion, giving reasons for the prayers.

8. Perceptibly, there is no scope of reunion between the parties for, the parties are staying separately since more than one year as on the date of presenting the petition under section 13B of the Act of 1955. Both the parties have mutually agreed for divorce, therefore, the six months period as well as one year as provided in section 13B(1) is almost over. Considering the stand taken by the respective parties, reunion is not possible. Not accepting the request of the parties, in the opinion of this Court, will only prolong their agony. Both the parties, are young and are desirous of pursuing their careers, as per their own wish. In the case on hand, the parties have fairly conceded before this Court that application seeking waiver was not filed, however, it is agreed that it shall be filed within a period of two weeks from today. Hence, in the interest of justice, it would be appropriate to allow an opportunity to both the parties, to file an application before the Court below as enumerated under section 13B of the Act of 1955 and let the Court below decide it in accordance with law.

9. The appeal, therefore, is allowed in terms of the above referred direction. The Family Suit no.1054 of 2025 is restored to its original file. Needless to clarify that the Family Court shall decide

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the application uninfluenced by the judgment dated 08.08.2025 at the earliest and not later than six months from today.

10. First Appeal is accordingly, allowed. No order as to costs. Civil Application, if any, stands disposed of.

(SANGEETA K. VISHEN,J)

(NISHA M. THAKORE,J)

BINOY B PILLAI