



2026:DHC:4767-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 23.03.2026
Pronounced on: 29.05.2026

+ MAT.APP.(F.C.) 60/2026 & CM APPL. 11752/2026

SHAHBAZ KHAN

.....Appellant

Through: Ms. Khalida Akhtar, Mr.
Abdullah Akhtar and Mr. Maaz
Akhtar, Advs.

versus

KOMAL SHRESTH

.....Respondent

Through: Mr. Shadaan, Advocate along
with respondent.

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal under section 19(1) of the Family Courts Act, 1984 read with section 29 of the Special Marriage Act, 1954 ("the Act") assails the Judgment dated 15.10.2025 passed by the learned Principal Judge, Family Court, South District, Saket, New Delhi, whereby the application filed by the appellant seeking waiver of the statutory period prescribed under Section 29 read with Section 28(2) of the Act has been dismissed, and consequently, the petition under Section 28 of the Act has been rejected as not maintainable.



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2. Briefly stated, the appellant and respondent are followers of different faiths and have solemnized and registered their marriage on 25.08.2025 under the Act in Delhi. Upon disclosure of the marriage to the family of the appellant, his father collapsed from shock and was subsequently diagnosed with liver failure, and his entire family has severed ties with him.

3. The respondent, on hearing the circumstances faced by the appellant, was forced to hide her marital status from her family, apprehending occurrence of a similar scenario and non-acceptance fearing disownment in future. Hence, till date the respondent's family is unaware of the marriage.

4. It is an admitted position that the marriage between the parties never commenced in substance as there is no cohabitation, no consummation, and no social or familial acceptance from either side.

5. In these circumstances, the appellant preferred a petition for divorce by mutual consent before the Family court, seeking to waive of the mandatory period of one year after the solemnization of marriage before presenting a petition under section 29 of the Act and the 6 months cooling off period before filing the second motion under section 28(2) of Act. The said petition was dismissed *vide* the impugned judgment dated 15.10.2025, leading to the filing of the present appeal.



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6. By way of the impugned judgment dated 15.10.2025, the learned Family Court has dismissed the appellants' application seeking waiver of the statutory period prescribed under Section 29 of the Act and consequently rejected the petition for divorce by mutual consent as not maintainable, on the erroneous premise that the case did not disclose "*exceptional hardship*" and that the parties had failed to make efforts towards cohabitation.

7. The impugned judgment has been assailed by the appellant on the ground that the learned Family Court has failed to exercise the discretion vested under Section 29 of Act in a judicious manner, and has instead adopted a hyper-technical approach by observing that the appellant failed to give an attempt to save the marriage which, on admitted facts, never commenced, was never consummated, and stood unworkable from inception.

8. It is submitted that the finding regarding absence of "*exceptional hardship*" is perverse, ignoring the severe social, psychological, and familial distress faced by the parties, and is further vitiated by speculative observations on medical issues beyond judicial domain. Reliance has been placed on *Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746 and *Amit Kumar v. Suman Beniwal*, 2021 SCC OnLine SC 1270, wherein it has been recognized that statutory waiting periods are directory and liable to be waived where continuation of marriage serves no purpose.



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9. We have heard the learned counsel for the parties and have perused the material on record.

10. The principal question that arises for consideration is whether the statutory period, as described under the Act, can be waived off and the parties be permitted to obtain a decree of divorce by way of mutual consent.

11. Section 29 of the Act enumerates restriction on divorce petitions being presented, during first year of the marriage by stating that no petition be presented before the court before one year has been passed, however, at the same time, it vests discretionary power on the courts to allow such presentation of divorce petition before one year of the marriage in rare and compelling circumstances, wherein if the petitioner is subject to *exceptional hardship* or respondent's conduct reflects *exceptional disparity*. The legislative intent behind the said provision is to ordinarily provide for a minimum period of stability and the discretionary powers vested on the courts are meant to be exercised cautiously and only in extraordinary cases.

12. Similarly, Section 28 of the Act provides for a six-month cooling-off period, though not explicitly, in cases of divorce sought by way of mutual consent. The provision serves a restorative purpose, rather than a purely procedural one, by providing the parties, an opportunity to reconsider and reconcile the marital relations.



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13. A conjoint reading of the aforesaid provisions reveals that the legislative intent is to protect the marriage as an institution by enumerating safeguards in form of the statutory timelines. Furthermore, the said provisions also give discretionary powers to the courts of be exercised in appropriate cases on the basis of peculiar facts and circumstances.

14. At this juncture, it is pertinent to note that Section 29 of the Act is *pari materia* to Section 14 of the Hindu Marriage Act, 1955 and the full bench of this court, recently, in case of *Shiksha Kumari v. Santosh Kumar*, 2025:DHC:11467-FB while analyzing the statutory timeline prescribed under section 13B (1) of the HMA for the presentation of a petition for divorce by mutual consent under Hindu Marriage act has held by as below:

“57. We may summarise our conclusions in response to the questions posed, as follows:

57.1. The statutory period of 01-year prescribed under section 13B(1) of the HMA as a pre-requisite for presenting the first motion, can be waived, by applying the proviso to section 14(1) of the HMA;

57.2. The waiver of the 01-year separation period under section 13B(1) of the HMA does not preclude waiver of the 06-month cooling-off period for filing the second motion under section 13B(2); and waiver of the 01-year period under section 13B(1), and the 06-month period under section 13B(2), are to be considered independently of each other;



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57.3. Where the court is satisfied that the 01-year period under section 13B(1) and the 06-month period under section 13B(2) of the HMA deserve to be waived, the court is not legally mandated to defer the date from which the divorce decree would take effect, and such decree may be made effective forthwith;

57.4. Such waiver is not to be granted merely for the asking but only upon the court being satisfied that circumstances of 'exceptional hardship to the petitioner' and/or 'exceptional depravity on the part of the respondent' exist, while also testing the case on the anvil of the considerations set-out in Pooja Gupta;

57.5. Waiver, as above, can be granted both by the Family Court as well as the High Court; and

57.6. As contemplated in the proviso to section 14(1) of the HMA, where a court finds that the waiver of the 01-year period under section 13B(1) has been obtained by misrepresentation or concealment, the court may defer the date on which the divorce would take effect, as may be considered appropriate; or may dismiss the divorce petition, at whichever stage it is pending, without prejudice to the right of the parties to present a fresh petition under section 13B(1) of the HMA after expiration of the 01-year period, on the same or substantially the same facts as may have been pleaded in the petition so dismissed.”

(emphasis added)

15. In the aforesaid backdrop, as the Section 28 & 29 of the Act is *pari materia* to Section 13(B) & 14 of the Hindu Marriage Act, 1955,



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the similar principles with respect to the prescribed statutory timeline will apply.

16. Therefore, as per Section 14 HMA, this Court is required to examine whether the present case discloses “exceptional hardship” and whether there exists any reasonable probability of reconciliation between the parties, it is an admitted position that the marriage between the parties was purely notional, without any cohabitation, consummation, or social and familial recognition. There is no child born out of the wedlock and the parties never resided together. The circumstances, as stated by the parties, namely, the severe familial estrangement faced by the appellant, the serious medical condition of his father and the respondent’s apprehension of similar consequences clearly constitutes “*exceptional hardship*” within the meaning of Section 29 of the Act.

17. In such a situation wherein, the parties are also *ad idem* for dissolution of marriage, insisting upon adherence to the statutory period of one year would serve no meaningful purpose. On the contrary, it would only result in prolongation of hardship, being contrary to the legislative intent and object of the Act. Thus, such periods can be waived of in exercise of judicial discretion.

18. In view of the foregoing, this Court is of the considered opinion that the Impugned Judgment cannot be sustained, having being proceeded on restrictive and hyper-technical interpretation of the



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statutory framework under the Act. The discretion vested in the Courts is intended to be exercised in exceptional circumstances, as in the present case, where the continuation of marriage will only result in prolonging agony to the parties due to unavoidable mental and social distress.

19. Accordingly, the present appeal stands allowed and the Impugned Judgment dated 15.10.2025 is, hereby, set aside. The application seeking waiver of the statutory period under Section 29 of special marriage act, 1954 (wrongly mentioned as sec. 14 by parties) is allowed. Consequently, the petition for divorce filed under section 28(1) of the SMA by way of mutual consent, as filed by the parties, is allowed to be entertained after waiving of statutory period of one year separation in view of exceptional circumstances as mentioned in Section 29 of SMA.

20. The matter is remanded back to the learned Family Court with the directions to proceed with the first motion petition under Section 28 (1) of the SMA expeditiously and pass an appropriate order in accordance with law, without insisting upon the statutory waiting period of separation of 1 year.

21. We further hope and trust that as soon as the parties file second motion petition u/s 28(2) of the SMA, the learned Family Court shall also decide the same expeditiously, in the light of the directions passed by this court in *Shiksha Kumari* (supra) as well as the law laid



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down by the Hon'ble Supreme Court in *Amardeep Singh* (supra) & *Amit Kumar* (supra), keeping in view the exceptional circumstances enumerated above, by us in this judgment.

22. The present appeal, along with pending application(s), if any, stands disposed of in the aforesaid terms.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

MAY 29, 2026/kp/kz