

## Pankaj Rajput Vs Kirti Rajput

**Court:** Madhya Pradesh High Court (Gwalior Bench)

**Date of Decision:** Oct. 7, 2021

**Acts Referred:** Code Of Civil Procedure, 1908 " Section 23(2), Order 32A Rule 3

Family Courts Act, 1984 " Section 9

Hindu Marriage Act, 1955 " Section 13B, 13 B(1), 13 B(2)

**Hon'ble Judges:** S.A.Dharmadhikari, J

**Bench:** Single Bench

**Final Decision:** Disposed Of

### Judgement

S.A. Dharmadhikari, J

The present petition is being filed challenging the order dated 22.07.2021 passed by the Additional Principal Judge to the Court of Principal Judge,

Family Court, District Gwalior in Case No. 24/2021 HMA, whereby the application filed by the petitioner and respondent under section 13-B of HMA

for waiving off cooling period in the light of judgment passed by the Hon'ble Supreme Court in the case of Amardeep Singh Vs. Harveen Kaur,

reported in AIR 2017 SC 4417, has been rejected.

Learned counsel for the petitioner submits that the petitioner and the respondent got married according to Hindu, rites and customs on 30.06.2020.

Since their marriage was not successful, therefore, they have decided to obtain a decree of divorce, hence, they have jointly filed an application u/S.

13B of HMA for grant of divorce by mutual consent. It is stated that since both of them have decided to seek divorce and to live separately, therefore,

pendency of the divorce petition for more than six months would seriously affect the future of both the petitioner and respondent, therefore, in the light

of judgment delivered by the Apex Court in the case of Amardeep Singh (supra), the cooling off period of six months may be waived off. Learned

counsel for the petitioner further submits that there is no possibility of compromise between the parties in future.

Heard the respondent appeared in person and perused the record.

The Hon'ble Supreme 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.

In view of the above judgment passed by the Hon'ble Supreme and taking into consideration the fact that there is a dispute between the parties since

long and now the parties have amicably settled the matter and decided to live separately and there are no chances of any settlement between them,

therefore, the cooling period of six months' as provided under Section 13-B of the HMA is waived off and the matter is directed to be placed before

the Family Court on 25.10.2021 for consideration. Petitioner and respondent are directed to remain present in person before the Family Court on

25.10.2021. The Family Court is directed to consider and finally decide the application under Section 13-B of the HMA expeditiously in the light of

judgment delivered by the Apex Court in the case of Amardeep Singh (supra).

With the aforesaid observation, the petition is disposed off.

No order as to costs.

E-copy/Certified copy as per rules/directions.