

# Relaxation of cooling off period in mutual Divorce.

PARUL GAIROLA  
Judge, Family Court  
Almora.

## Ralevant provision Section 13B H.M.ACT

Section 13B H. M. ACT incorporated in 27/05/1976 provides for divorce by mutual consent.

### **Essentials:**

#### As per Sec. 13B(1)

1. Parties have been living separately for a period of one year or more.
- 2.They have not been able to live together.
- 3.Mutually agreed that the marriage should be dissolved.

#### As per Sec. 13B(2)

After the presentation of petition a cooling off period not less than 6 months but not later than 18 months on motion of both the parties.

## Reasons for providing cooling period of 6 months:

- 1. Parties may change their mind.**
- 2. Gives spouses time to forgive and forget.**
- 3. Gives time to think about consequences of divorce on their children.**

## Why waiving off cooling period?

In the landmark Judgment of **Amardeep Singh v. Harveen Kaur (2017) 8 SCC 746**, it was held by Hon'ble Supreme Court that 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.

It has also been held that the period mentioned in sec 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 where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.

## **Factors to be considered for waiving off cooling period:**

- 1.The length of time for which the parties had been married ;**
- 2.how long the parties had stayed together as husband and wife;**
- 3.the length of time the parties had been staying apart;**
- 4.the length of time for which the litigation had been pending**
- 5.whether there were any other proceedings between the parties ;**
- 6.whether there was any possibility of reconciliation;**
- 7.whether any children born out of the wedlock;whether the parties arrived at a genuine settlement which takes care of alimony , custody of children or any other pending issues.**

## **Time period for filing waiver application**

**One week after the first motion giving reasons for the prayer of waiver.**

**If the conditions as laid down in the Amardeep Singh v. Harveen Kaur (2017) 8 SCC 746, are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the Court.**

The law laid down in **Amardeep Singh vs Harveen Kaur (supra)** regarding waiver of cooling period has been reiterated in the recent judgement of Hon'ble Supreme Court **Amit Kumar vs Suman Beniwal 2021 SCC online SC 1270**

**Thanks**