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CASE COMMENTARY: - AMANDEEP VS HARVEEN KAUR (2017)

-Lucky Dhir

IN THE SUPREME COURT OF INDIA

Amardeep Singh

...Appellant

Versus

Harveen Kaur

...Respondent

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11158 OF 2017

(Arising out of Special Leave Petition (Civil)No. 20184 of 2017)

¹BRIEF FACTS OF THE CASE

The Appellant (Amardeep Singh) got married to the Respondent (Harveen Kaur) on 16th January 1994 in Delhi and they have two children together. In 2008, they began to live separately due to conflicts between the two parties. Following that, the parties reached an agreement to settle all of their differences and pursue divorce by mutual consent in 2017. As

¹ BLJ Legal | Best Law Firm and Advocates in Delhi NCR, Amardeep Singh vs Harveen Kaur
<https://www.bljlegal.in/judgement-update/divorce-cases-repository/amardeep-singh-vs-harveen-kaur>.

per the settlement, the husband had to pay the wife a permanent alimony of Rs.2.75 crores. The Appellant husband handed over two cheques for Rs.50, 00,000/- in part payment of permanent alimony. The custody of the children was with the Appellant. On the 8th of May 2017, a civil suit was initiated before the Family Court of Tis Hazari Court, New Delhi wherein both parties' statements concerning the issue were recorded.

Subsequently, the parties requested a waiver of the six-month waiting term for the second motion, stating that they had been residing apart for more than eight years and that there was no prospect of their reconciliation. They laid emphasis on the fact that any further delay could jeopardize their odds of being rehabilitated. The parties asked the Hon'ble Supreme Court to adjudicate on whether the cooling-off period could be rescinded, based on prior verdicts.

²ISSUES

Section 13B of the Hindu Marriage Act, 1955, governs divorce by mutual consent. It has two sub-sections:

- Whether the exercise of Article 142 of the Indian Constitution to waive the minimum waiting period of six months under Section 13B(2) mandatory or directory?
- Whether the exercise of power under Article 142 of the Constitution to waive the statutory period under Section 13B(2) of the Hindu Marriage Act, 1955 appropriate?

The core question in *Amardeep Singh vs Harveen Kaur* was whether this six-month period is **mandatory** or **directory**, and whether courts could waive it in exceptional cases.

ARGUMENTS OF THE APPELLANT (AMARDEEP SINGH – HUSBAND)

- The husband said that he and his wife had been living separately for more than 8 years and there was no chance of living together again.
- He argued that both of them had mutually agreed to end their marriage and had filed the divorce petition together.

² Client Challenge, <https://www.scribd.com/document/617217214/Amardeep-Singh-vs-Harveen-Kaur>.

- He informed the Court that all issues, including permanent alimony of ₹2.75 crore and child custody, had already been settled.
- He submitted that waiting for another six months would not save the marriage because it had already broken down.
- He argued that the cooling-off period would only cause more emotional stress, delay, and hardship to both parties.
- Therefore, he requested the Court to waive the six-month waiting period and grant the divorce without unnecessary delay.

ARGUMENTS OF THE RESPONDENT (HARVEEN KAUR – WIFE)

- The wife agreed with the husband that their marriage had completely broken down and there was no possibility of reconciliation.
- She stated that she had given her consent voluntarily and was not under any pressure or force.
- She confirmed that all matters related to alimony, child custody, and other disputes had been settled peacefully.
- She argued that keeping them married for another six months would serve no useful purpose.
- She submitted that both of them wanted to move on with their lives and start a new chapter.
- Therefore, she also requested the Court to waive the cooling-off period and grant the decree of divorce by mutual consent as early as possible.

³SUPREME COURT’S REASONING AND JUDGMENT

The Supreme Court, in a bench comprising **Justice Adarsh Kumar Goel** and **Justice Uday Umesh Lalit**, delivered a nuanced judgment. Key points include:

1.Directory, Not Mandatory

The Court held that the six-month cooling-off period under **Section 13B(2)** is **directory**, meaning courts have the discretion to waive it in exceptional circumstances. The Court emphasized that the purpose of the cooling-off period is to

³ Just a moment..., <https://indiankanoon.org/doc/79830357/>.

prevent hasty decisions and encourage reconciliation. However, if reconciliation is impossible, prolonging the process only causes unnecessary agony.

The Court relied on principles of statutory interpretation, citing *Justice G.P. Singh's Principles of Statutory Interpretation* and the case *Kailash vs Nanhku* (2005). It noted that the language of a statute is not always decisive; the context, subject matter, and legislative intent must be considered.

2.Guidelines for Waiver

The Court outlined specific conditions under which the cooling-off period can be waived:

- **Duration of Separation:** The parties must have been separated for at least one year (as per Section 13B(1)) plus the six-month period before the first motion.
- **Failed Mediation Efforts:** All attempts at mediation or reconciliation, including under the Family Courts Act or CPC, must have failed, with no likelihood of success.
- **Settlement of Disputes:** The parties must have resolved all issues, such as alimony, child custody, and other pending disputes.
- **Prolonged Agony:** The waiting period should not unnecessarily prolong the parties' suffering or hinder their rehabilitation.

The Court also allowed waiver application to be filed **one week after the first motion**, with reasons for seeking the waiver.

3. Use of Technology and Representation

To facilitate proceedings, the Court permitted the use of **video conferencing** and allowed close relatives (e.g., parents or siblings) to represent parties unable to appear in person, provided the court is satisfied with the reason.

4. Conflict in Precedents

The judgment addressed conflicting decisions:

- In *Manish Goel vs Rohini Goel* (2010), the Court held that the cooling-off period could not be waived under Article 142, as it would contravene statutory provisions.
- In cases like *Anjana Kishore vs Puneet Kishore* (2002) and *Nikhil Kumar vs Rupali Kumar* (2016), the Supreme Court had waived the period under Article 142.
- The Court clarified that while Article 142 cannot be used to bypass statutory provisions in the absence of pending proceedings, courts can waive the period under their inherent discretion if the conditions are met.

⁴IMPLICATIONS OF THE JUDGMENT

The *Amardeep Singh vs Harveen Kaur* ruling has transformed the landscape of mutual consent divorce in India:

- **Faster Divorce Proceedings:** Couples who have genuinely settled their differences and have no chance of reconciliation can now seek quicker resolution, reducing emotional and financial strain.
- **Judicial Discretion:** Family courts have clear guidelines to exercise discretion, ensuring waivers are granted only in deserving cases.
- **Focus on Rehabilitation:** The judgment prioritizes the parties' ability to move forward with their lives, aligning with the modern view that a purposeless marriage serves no societal benefit.
- **Technological Integration:** The use of video conferencing and representation by relatives makes the process more accessible, especially for parties living abroad or facing logistical challenges.

⁴ (May 31, 2021), <https://www.manupatrafast.in/TempPDF/MANU-SC-1134-2017-JUD20231130090242.pdf>.

This ruling has been widely cited in subsequent cases and has influenced family courts across India to adopt a more pragmatic approach to mutual consent divorces.

CONCLUSION

If any person is considering a mutual consent divorce, the Amardeep Singh vs Harveen Kaur judgment offers hope for a faster resolution, provided you meet the court's criteria. Consulting an experienced family law advocate can help you navigate the process, ensure all disputes are settled, and present a strong case for waiving the cooling-off period.