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

*Judgment reserved on: 19.09.2025*

*Judgment delivered on: 17.12.2025*

+ MAT.APP.(F.C.) 111/2025

.....Appellant

Through: Mr. Rajshekhar Rao, Sr. Advocate  
(*Amicus-Curiae*) with Ms. Aashna  
Chawla, Mr. Ajay Sabharwal, Mr.  
Wamic Wasim Nargal and Mr. Zahid  
Laiq Ahmed, Advocates.

versus

.....Respondent

Through: Mr. Saurabh Kansal, Advocate with  
Mr. Raghav Vij, Mr. Suraj Kumar,  
Ms. Ritul Sharma, and Mr. Pratham  
Malik, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**HON'BLE MS. JUSTICE RENU BHATNAGAR**

## **J U D G M E N T**

**ANUP JAIRAM BHAMBHANI, J.**

*Is a court mandated to stall divorce by mutual consent,  
thrusting unwilling parties – not into marital bliss, but into a  
matrimonial abyss?*

The present reference arises from judgment dated 22.04.2025  
rendered by a Division Bench of this court in MAT.APP. (F.C.) No.  
111/2025, concerning the timeline prescribed for the presentation of a



petition for divorce by mutual consent under section 13B(1) of the Hindu Marriage Act, 1955 (“HMA”). Having regard to the view taken by an earlier Division Bench of this court in *Sankalp Singh vs. Prarthana Chandra*,<sup>1</sup> the Division Bench in the present matter has observed that the interpretation adopted in *Sankalp Singh* may warrant reconsideration.

2. In light of the divergent opinion that the Division Bench was inclined to express in its judgment dated 22.04.2025, it has formulated specific questions of law and requested Hon’ble the Chief Justice to place the matter before a Full Bench of this court for authoritative determination. The legal questions referred to the Full Bench read as follows:

“(a) Whether a petition under Section 13B(1) of the Hindu Marriage Act can be filed by the parties before completing the period of separation of one year?;

(b) If the answer to the above question is in the affirmative, whether the period of six months between the presentation of the First Motion under Section 13B(1) of the Hindu Marriage Act and the Second Motion under Section 13B(2) of the Hindu Marriage Act, can be waived off by the learned Court even though the parties have not been living separately for more than one year on the date when such waiver is prayed for?”

3. To get the context of the issue involved, the text of section 13B of the HMA may be noticed :

**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 solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have

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<sup>1</sup> 2013 SCC OnLine Del 855



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.

(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 solemnized 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.

(emphasis supplied)

4. Also relevant for purposes of the present proceedings is section 14 of the HMA, which reads as follows :

**14. No petition for divorce to be presented within one year of marriage.**—(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after expiration of the said one year upon the same or substantially the same facts as those alleged in support of the petition so dismissed.



*(2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year.*

*(emphasis supplied)*

5. Since this reference arises from the decision of a Division Bench of this court in *Sankalp Singh*, the relevant extract of the judgment must be noticed :

*“30. A more liberal construction can envisage the application of the proviso to Section 14(1) of the said Act without compromising on the essential ingredients of Section 13B(1) of the said Act. This is possible by ensuring that none of the three essential ingredients are compromised. Thus, parties should have been living separately for one (1) year or more, that they have not been able to live together and have mutually agreed that the marriage should be dissolved. However, the dissolution of marriage has to take effect only after the hiatus period of six (6) to eighteen (18) months, on the second motion being filed. Thus, before such a decree of divorce is passed post second motion the period of one (1) year of separation ought to have elapsed but in order to present the first motion, the requirement of one (1) year separation would not apply provided it meets the parameters of proviso to Section 14(1) of the said Act. This view would not compromise on the essential ingredients of any part of Section 13B of the said Act and simultaneously respect the wisdom of the legislature which enacted Section 13B of the said Act and incorporated it by insertion with sub-section (1) beginning with “Subject to the provisions of this Act” which would include Section 14. Not only that Section 14 of the said Act itself begins with a “Notwithstanding” clause. This would, thus, be the harmonious construction of the provisions of the said Act which would enable to give meaning to all the relevant provisions of the said Act without compromising the ingredients of any. Such a course of action is possible especially because there will not be a waiver of minimum six (6) months hiatus period between the grant of first motion and*



*the second motion being presented with the additional condition under Section 13B(1) of the said Act that even if the first motion is presented within the first year of marriage as per the satisfaction of proviso to Section 14(1) of the said Act, the decree of divorce would only be granted once the period of one (1) year has elapsed from the separation.*

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*“32. We, thus, set aside the impugned order dated 12.6.2012 with a direction to the Family Court, Patiala House to re-examine the case for grant of the first motion on the application earlier presented but permitting the parties to place on record the material in support of their application under proviso to Section 14(1) of the said Act within fifteen (15) days from today. If a case of exceptional hardship or exceptional depravity is made out then the first motion can be passed and the second motion can be presented within the window of six (6) to eighteen (18) months from the date when the first motion could have been accepted without waiving the minimum period of six (6) months and also ensure that the period of one (1) year of separation from 12.4.2012 has expired.”*

(emphasis supplied)

6. In sum and substance, in *Sankalp Singh* the Division Bench has envisaged the application of the proviso to section 14(1) of the HMA, adopting a liberal construction of that provision. The Division Bench has held, that so as not to compromise on the essential ingredients of section 13B(1) of the HMA, though the first motion *can be presented* even before the 01-year period of separation prescribed under section 13B(1) of the HMA has elapsed, that would however be subject to the qualification that the second motion under section 13B(2) would be allowed and the divorce decree would be granted *only after* the 01-year of separation period, as required under section 13B(1), is complete.
7. For convenience, in this judgment a petition under section 13B(1) of the HMA has been referred-to as the ‘first motion’; and a petition under section 13B(2) has been referred-to as the ‘second motion’.



## LEGAL POSITION

### SUPREME COURT VIEW

8. Before answering the questions, it must be noticed that in its decision in *Smt. Sureshta Devi vs. Om Prakash*,<sup>2</sup> the Supreme Court has held that the requirement that parties must have been living separately for a period of 01-year is one of the pre-requisites for entertaining a petition under section 13B(1) of the HMA. This is what the Supreme Court has said:

*“8. There are three other requirements in sub-section (1). They are:*

- (i) They have been living separately for a period of one year,*
- (ii) They have not been able to live together, and*
- (iii) They have mutually agreed that marriage should be dissolved.*

*“9. The ‘living separately’ for a period of one year should be immediately preceding the presentation of the petition. It is necessary that immediately preceding the presentation of petition, the parties must have been living separately. The expression ‘living separately’, connotes to our mind not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof by force of circumstances, and yet they may not be living as husband and wife. The parties may be living in different houses and yet they could live as husband and wife. What seems to be necessary is that they have no desire to perform marital obligations and with that mental attitude they have been living separately for a period of one year immediately preceding the presentation of the petition. The second requirement that they ‘have not been able to live together’ seems to indicate the concept of broken down marriage and it would not be possible to reconcile*

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<sup>2</sup> (1991) 2 SCC 25





themselves. The third requirement is that they have mutually agreed that the marriage should be dissolved.”

(emphasis supplied)

9. As would be noticed from the foregoing observations of the Supreme Court, the court has enunciated *03 pre-requisites* that are required to be satisfied before a petition seeking divorce by mutual consent can be *presented* under section 13B(1) of the HMA. The 03 pre-requisites are:
- 9.1. *First*, the parties must have been *living separately* for a period of at least 01-year immediately preceding the presentation of the first motion, in relation to which the Supreme Court has clarified that living separately has no reference to the place of living (parties may reside under the same roof or may reside physically apart), but refers to the parties “not living as husband and wife” and “having no desire to perform marital obligations”, with the mental attitude of living separately for a period of at least 01-year immediately preceding the presentation of the first motion;
- 9.2. *Second*, that the parties have not been able to live together, which refers to the situation of a broken-down marriage, with no possibility of re-conciliation; and
- 9.3. *Third*, that the parties have mutually agreed that the marriage be dissolved.
10. It must be also be noticed that in a subsequent decision in ***Ashok Hurra vs. Rupa Bipin Zaveri***,<sup>3</sup> another co-equal Bench of the Supreme Court, though without overturning the decision in *Sureshta Devi*, expressed certain reservations regarding the reasoning adopted

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<sup>3</sup> (1997) 4 SCC 226



in that judgment, opining that certain observations in *Sureshta Devi* appear to be “very wide and may require reconsideration in an appropriate case”. A closer reading of *Ashok Hurra* would however show, that the Bench did not disagree with the 03 pre-requisites referred-to above as laid-down in *Sureshta Devi*, but only observed that *Sureshta Devi* appears to have laid-down too wide a proposition when it said that the consent of parties must continue till the divorce decree is passed.

11. In another subsequent decision in *Anil Kumar Jain vs. Maya Jain*,<sup>4</sup> a 02-Judge Bench of the Supreme Court also re-affirmed the principles laid down in *Sureshta Devi*, though it again resolved the impasse between the couple in that case by invoking their powers under Article 142 of the Constitution of India to grant relief, even though continuing mutual consent was not forthcoming.
12. Marking a change in the view however, in *Amardeep Singh vs. Harveen Kaur*,<sup>5</sup> in which case the parties had been living separately for over 08 years and were agreed that there was no possibility of reunion, for the first time a 02-Judge Bench of the Supreme Court held that the 06-month waiting period prescribed under section 13B(2) of the HMA is not *mandatory* but *directory*; and further observed that the “court” possesses the discretion to waive the 06-month statutory period prescribed under section 13B(2) of the HMA,

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<sup>4</sup> (2009) 10 SCC 415

<sup>5</sup> (2017) 8 SCC 746





provided certain conditions are satisfied. The Supreme Court observed as follows:

“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 13-B(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.

“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 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.

“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 v. Nanhku [Kailash v. Nanhku, (2005) 4 SCC 480] as follows : (SCC pp. 496-97, para 34)

“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 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.”” (p. 338)*

*“ ‘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.**” (pp. 339-40)*

*“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 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 13-B(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 32-A 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 court concerned.

“20. Since we are of the view that the period mentioned in Section 13-B(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.”

(emphasis supplied)

13. Then again, in **Amit Kumar vs. Suman Beniwal**,<sup>6</sup> the Supreme Court further widened the scope of the court’s discretion in waiving the 06-month waiting period under section 13B(2) of the HMA, with the following observations:

“20. The factors mentioned in Amardeep Singh v. Harveen Kaur [Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746 : (2017) 4 SCC (Civ) 804 : (2017) 3 SCC (Cri) 505], in para 19 are illustrative and not exhaustive. These are factors which the court is obliged to take note of. If all the four conditions mentioned above are fulfilled, the court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13-B(2) of the Marriage Act.

“21. The Family Court, as well as the High Court, have misconstrued the judgment of this Court in Amardeep Singh v. Harveen Kaur [Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746 : (2017) 4 SCC (Civ) 804 : (2017) 3 SCC (Cri) 505] and proceeded on the basis that this Court has held that the conditions specified in para 19 of the said judgment, quoted hereinabove, are mandatory and that the statutory waiting period of six months under Section

<sup>6</sup> (2023) 17 SCC 648



**13-B(2) can only be waived if all the aforesaid conditions are fulfilled, including, in particular, the condition of separation of at least one-and-half year's before making the motion for decree of divorce.**

“22. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. A judgment is not to be read in the manner of a statute and construed with pedantic rigidity. In *Amardeep Singh v. Harveen Kaur* [*Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746 : (2017) 4 SCC (Civ) 804 : (2017) 3 SCC (Cri) 505], this Court held that the statutory waiting period of at least six months mentioned in Section 13-B(2) of the Hindu Marriage Act was not mandatory but directory and that it would be open to the Court to exercise its discretion to waive the requirement of Section 13-B(2), having regard to the facts and circumstances of the case, if there was no possibility of reconciliation between the spouses, and the waiting period would serve no purpose except to prolong their agony.

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**“26. For exercise of the discretion to waive the statutory waiting period of six months for moving the motion for divorce under Section 13-B(2) of the Hindu Marriage Act, the Court would consider the following amongst other factors:**

- (i) the length of time for which the parties had been married;
- (ii) how long the parties had stayed together as husband and wife;
- (iii) the length of time the parties had been staying apart;
- (iv) the length of time for which the litigation had been pending;
- (v) whether there were any other proceedings between the parties;
- (vi) whether there was any possibility of reconciliation;
- (vii) whether there were any children born out of the wedlock;
- (viii) whether the parties had freely, of their own accord, without any coercion or pressure, arrived at a



*genuine settlement which took care of alimony, if any, maintenance and custody of children, etc.”*

(emphasis supplied)

14. It must be noted however, that though in *Amit Kumar* the Supreme Court laid-down down the above 08 factors which should be considered by courts while waiving-off the requirement of 06-month period between the first motion and the second motion, in that case the Supreme Court had yet again exercised its plenary powers under Article 142 of the Constitution to grant divorce.
15. An important verdict on section 13B of the HMA came by way of a decision of a Constitution Bench of the Supreme Court in *Shilpa Sailesh vs. Varun Sreenivasan*,<sup>7</sup> in which the Supreme Court held that section 13B of the HMA does not impose any fetters on *their* powers to grant divorce by mutual consent “*when the substantive conditions of the section are fulfilled*”; and where, after referring to certain factors, the court is convinced that a decree of divorce should be granted. The question in *Shilpa Sailesh* was however only in relation to reducing or waiving of the 06-month *cooling-off* period between the filing of the first motion and the second motion under Article 142 of the Constitution; but some observations of the Supreme Court in this case throw valuable light on the trend of the law on the point. The following observations in *Shilpa Sailesh* may be noticed:

*“26. However, there are cases of exceptional hardship, where after some years of acrimonious litigation and prolonged suffering, the parties, with a view to have a fresh start, jointly pray to the court to dissolve the marriage, and seek waiver of the need to move*

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<sup>7</sup> (2023) 14 SCC 231



**the second motion.** On account of irreconcilable differences, allegations and aspersions made against each other and the family members, and in some cases multiple litigations including criminal cases, continuation of the marital relationship is an impossibility. The divorce is inevitable, and the cooling off period of six months, if at all, breeds misery and pain, without any gain and benefit. These are cases where the object and purpose behind sub-section (2) to Section 13-B of the Hindu Marriage Act to safeguard against hurried and hasty decisions are not in issue and question, and the procedural requirement to move the court with the second motion after a gap of six months acts as an impediment in the settlement. At times, payment of alimony and permanent lump sum maintenance gets delayed, while anxiety and suspicion remain. **Here, the procedure should give way to a larger public and personal interest of the parties in ending the litigation(s), and the pain and sorrow effected, by passing a formal decree of divorce, as de facto the marriage had ended much earlier.**

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“31. However, there is a difference between existence of a power, and exercise of that power in a given case. Existence of power is generally a matter of law, whereas exercise of power is a mixed question of law and facts. Even when the power to pass a decree of divorce by mutual consent exists and can be exercised by this Court under Article 142(1) of the Constitution of India, when and in which of the cases the power should be exercised to do “complete justice” in a “cause or matter” is an issue that has to be determined independent of existence of the power. This discretion has to be exercised on the basis of the factual matrix in the particular case, evaluated on objective criteria and factors, without ignoring the objective of the statutory provisions. **In Amit Kumar v. Suman Beniwal [Amit Kumar v. Suman Beniwal, (2023) 17 SCC 648], this Court has held that reading of sub-sections (1) and (2) to Section 13-B of the Hindu Marriage Act envisages a total waiting period/gap of one-and-a-half years from the date of separation for the grant of decree of divorce by mutual consent. Once the condition for waiting period/gap of one-and-a-half years from the date of separation is fulfilled, it can be safely said that the parties**





**had time to ponder, reflect and take a conscious decision on whether they should really put the marriage to end for all times to come.** This period of separation prevents impulsive and heedless dissolution of marriage, allows tempers to cool down, anger to dissipate, and gives the spouses time to forgive and forget.

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**“33. In our opinion, Section 13-B of the Hindu Marriage Act does not impose any fetters on the powers of this Court to grant a decree of divorce by mutual consent on a joint application, when the substantive conditions of the section are fulfilled and the Court, after referring to the factors mentioned above, is convinced and of the opinion that the decree of divorce should be granted.**

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“75. In view of our findings on the first question, this question has to be answered in the affirmative, inter alia, holding that **this Court, in view of settlement between the parties, has the discretion to dissolve the marriage by passing a decree of divorce by mutual consent, without being bound by the procedural requirement to move the second motion.** This power should be exercised with care and caution, keeping in mind the factors stated in *Amardeep Singh* [*Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746 : (2017) 4 SCC (Civ) 804 : (2017) 3 SCC (Cri) 505] and *Amit Kumar* [*Amit Kumar v. Suman Beniwal*, (2023) 17 SCC 648]. This Court can also, in exercise of power under Article 142(1) of the Constitution of India, quash and set aside other proceedings and orders, including criminal proceedings.”

(emphasis supplied)

16. Though *Shilpa Sailesh* only held that the power of the Supreme Court under Article 142 of the Constitution is unfettered by the provisions of section 13B of the HMA in granting divorce by mutual consent, what comes forth from this decision is that the 06-month waiting period prescribed under section 13B(2) of the HMA between the filing of the first motion and the second motion, is *not sacrosanct or immutable*.





17. It is also notable that in *Shilpa Sailesh* the Supreme Court dealt only with the waiver of the 06-month period stipulated under section 13B(2) of the HMA; and that too, from the perspective as to whether it was available *to the Supreme Court* in exercise of its powers under Article 142 of the Constitution to waive that period and grant divorce by mutual consent. This was necessitated perhaps by reason of the decision of a 02-Judge Bench of the Supreme Court in *Manish Goel vs. Rohini Goel*,<sup>8</sup> where they had disapproved the use of Article 142 for that purpose, in contradistinction to the view taken in several earlier judgments of the Supreme Court including in *Anjana Kishore vs. Puneet Kishore*<sup>9</sup> and *Anil Kumar Jain*.

#### LEGAL POSITION

#### HIGH COURT VIEW

18. We must also notice that a Single Bench of this court in *Pooja Gupta & Anr. vs Nil*,<sup>10</sup> while dealing with a first appeal against an order passed in a matrimonial case, refusing to entertain a first motion prior to the 01-year period stipulated in section 13B(1) of the HMA, applied the proviso to section 14(1) of the HMA, further observing that it is permissible to waive the 01-year period provided the court satisfies itself *inter-alia* as to the following:

- “(a) the maturity and the comprehension of the spouses;
- (b) absence of coercion/intimidation/undue influence;
- (c) the duration of the marriage sought to be dissolved;
- (d) absence of any possibility of reconciliation;

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<sup>8</sup> (2010) 4 SCC 393

<sup>9</sup> (2002) 10 SCC 194

<sup>10</sup> 2003 SCC OnLine Del 1197



(e) lack of frivolity;  
(f) lack of misrepresentation or concealment;  
(g) the age of the spouses and the deleterious effect of the continuance of a sterile marriage on the prospects of re-marriage of the parties.”

Furthermore, the learned Single Judge also satisfied himself, by personally examining the parties, that the aforesaid conditions had been fulfilled; and was satisfied with the explanation given by the parties as regards the exceptional hardship they would face if the marriage was to continue.

19. However, for sake of completeness, it must be noted that several Single Benches of this court have also taken the view that the 01-year period under section 13B(1) of the HMA is mandatory and cannot be waived. Such was the view of the learned Single Judges of this court in *Urvashi Sibal & Anr. vs. Govt. of NCT of Delhi*,<sup>11</sup> *Mohin Saili vs. Nil*,<sup>12</sup> and *Sunny vs. Sujata*.<sup>13</sup> The basis of this view was essentially that section 13B is a complete code in itself; and that therefore, parties cannot invoke the proviso to section 14(1) of the HMA to seek waiver of the statutory period of 01-year of separation for filing a petition under section 13B of the HMA; and that the prescription under section 13B(1) of the HMA was mandatory and not directory.
20. In fact in *Mohin Saili*, the learned Single Judge had expressed his view more strongly, observing that the 01-year separation period under section 13B(1) is part of substantive law and is not a mere

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<sup>11</sup> 2010 SCC OnLine Del 18

<sup>12</sup> 2010 SCC OnLine Del 4154

<sup>13</sup> 2012 SCC OnLine Del 2439



procedural formality; and that the said period cannot be waived merely for the convenience of the parties.

### DISCUSSION

21. However, upon a scrutiny of the legal position as it stands subsequent to the aforesaid pronouncements, it becomes clear that the law has since evolved, and the jurisprudential landscape has undergone a substantial transformation.
22. To appreciate how the law has evolved in relation to the timelines set-out in section 13B of the HMA over a period of time, it would be necessary to summarise the most relevant verdicts of the Supreme Court on the point:
  - 22.1. **In 1991**, in its decision in *Sureshta Devi*, the Supreme Court held that the requirement that parties must have been living separately for a period of 01-year contained in section 13B(1) of the HMA is a pre-requisite.
  - 22.2. **In 1997**, in *Ashok Hurra*, a co-equal Bench of the Supreme Court did not overturn the decision in *Sureshta Devi* but observed that certain observations in *Sureshta Devi* appear to be “very wide and may require reconsideration in an appropriate case”. However, as noted above, the observation of the Supreme Court in *Ashok Hurra* was with reference to whether it is necessary for the consent of parties to continue till the decree of divorce is granted, and in that case, the second motion had come-up for consideration beyond the 18-month



period stipulated in section 13B(2) of the HMA.<sup>14</sup> Therefore, in *Ashok Hurra* the Supreme Court did *not* digress from the view taken in *Sureshta Devi* on the point whether the 01-year period prescribed in section 13B(1) of the HMA is a pre-requisite. The decision in *Ashok Hurra* therefore has no application or relevance for purposes of the issues referred to this Full Bench.

22.3. **In 2009**, while deciding *Anil Kumar Jain*, a 02-Judge Bench of Supreme Court reaffirmed the principles laid-down in *Sureshta Devi*.

22.4. **In 2017**, in *Amardeep Singh*, the Supreme Court held that the “court” - which would include the Family Court and the High Court - has the discretion to waive the 06-month statutory period prescribed under section 13B(2) of the HMA. This observation of the Supreme Court is relevant, on point of principle, and would aid us in deciding whether the timeline prescribed in section 13B(1) of the HMA is mandatory or discretionary, in particular context of *Sankalp Singh* having held that it is necessary for the 01-year separation period to have elapsed before a mutual consent divorce decree is granted. In this case, the Supreme Court also laid down the 04 factors that the court must consider before waiving the 06-month cooling-off period under section 13B(2) of the HMA,<sup>15</sup> as referred-to above.

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<sup>14</sup> *Ashok Hurra*, para 16

<sup>15</sup> *Amardeep Singh*, para 19



22.5. In 2021, in *Amit Kumar*, the Supreme Court held that the 04 factors set-out by it in *Amardeep Singh* are not exhaustive but only illustrative. A closer reading of *Amit Kumar* would show, that what the Supreme Court held was that *if* the 04 factors set-out in *Amardeep Singh* are fulfilled, then the courts – which would include the Family Court and the High Court – *must necessarily* exercise discretion in favour of waiving the 06-month waiting period prescribed under section 13B(2) of the HMA; but, that *even if* those 04 factors are not fulfilled, the courts would *not* be denuded of their power to exercise such discretion. The Supreme Court also held that while exercising discretion to waive the 06-month period under section 13B(2), the court – which would include the Family Court and the High Court – would *inter-alia* consider the additional factors set-out in that judgment.<sup>16</sup>

22.6. In 2023, in *Shilpa Sailesh*, a Constitution Bench of the Supreme Court held that Section 13B of the HMA does not impose any fetters on the *powers of the Supreme Court* to grant divorce by mutual consent on a joint application when the “*substantive conditions of the section*” are fulfilled and the court is convinced and of the opinion that the decree of divorce should be granted.<sup>17</sup> In fact, it was observed that the Supreme Court can grant divorce by mutual consent, even without

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<sup>16</sup> *Amit Kumar*, para 26

<sup>17</sup> *Shilpa Sailesh*, para 33



requiring the parties to move a second motion.<sup>18</sup> To be sure, in this case, another Bench of the Supreme Court had already granted divorce to the parties by mutual consent.<sup>19</sup> Clearly therefore, divorce was granted in *Shilpa Sailesh* by the Supreme Court in exercise of its plenary powers under Article 142 of the Constitution, which does *not* amount to the Supreme Court laying-down law under Article 141 of the Constitution.

23. It is in the foregoing context that we must consider four aspects: *First*, whether the Family Court and the High Court can *completely waive* the 01-year period stipulated under section 13B(1) of the HMA, by allowing parties to *present* the first motion even before they have lived separately for at least 01-year, by invoking the proviso to section 14(1) of the HMA. *Second*, whether such waiver should be permitted only in cases of “*exceptional hardship to the petitioner*” or “*exceptional depravity on the part of the respondent*” as contemplated in the proviso to section 14(1). *Third*, in a case where the 01-year period under section 13B(1) is waived, can the Family Court and the High Court *also* waive the 06-month cooling-off period stipulated under section 13B(2) of the HMA. *Fourth*, having waived the 01-year period under section 13B(1) *and* the 06-month period under section 13B(2) of the HMA, can the court allow the second motion and grant a decree of divorce by mutual consent that is effective *forthwith*, or, can the second motion be allowed and the divorce decree granted *only*

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<sup>18</sup> *Shilpa Sailesh*, para 75

<sup>19</sup> *Shilpa Sailesh*, para 77



after expiration of the 01-year separation period stipulated under section 13B(1).

### ANSWER TO LEGAL QUESTION NO. 1

24. In view of the foregoing legal landscape, we are of the view that the first question of law framed for consideration before us –viz., whether 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 – already stands answered in the affirmative by the Division Bench in *Sankalp Singh* invoking the proviso to section 14(1); and we find no reason to deviate from that judicial view. We may clarify that no decision of the Supreme Court has been brought to our notice which may have overruled *Sankalp Singh* or laid down law to the contrary.
25. Re-articulating the legal principle in *Sankalp Singh* therefore, it is clarified that the 01-year period stipulated under section 13B(1) of the HMA, for presenting the first motion *may be* waived at the discretion of the *Family Court* or the *High Court*. Consequently, it is legally permissible for a court to entertain a first motion even prior to the expiry of the 01-year separation period.
26. For completeness it may also be observed that the legal position that the 01-year period stipulated under section 13B(1) of the HMA can be waived, as first held in *Pooja Gupta* by a Single Bench of this court and echoed in *Sankalp Singh*, has also been followed by two Division Benches of the Rajasthan High Court in *Kuldeep Singh Shekhawat vs. Smt. Deeraj Kanwar*<sup>20</sup> and *Nitish Agarwal vs. Ms. Anchal*

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<sup>20</sup> 2020 (1) RLW 688 (Raj.), para 31





*Singhal*,<sup>21</sup> which courts have entertained the first motion accompanied by an application seeking waiver of the 01-year period under the proviso to section 14(1) of the HMA, holding that such waiver is permissible, though subject to certain conditions.

27. In view of our observations above, we are of the opinion that the view taken earlier by the various Single Benches of this court, holding that section 13B of the HMA is a *complete code in itself* and that the proviso to section 14(1) of the HMA does not apply to petitions filed under section 13B of the HMA, is not the correct view. We hold, that in light of the decision of the Division Bench of this court in *Sankalp Singh*, section 13B of the HMA is *not a complete code*; and the judgments<sup>22</sup> of the various Single Benches of this court, taking the contrary view are hereby overruled.
28. Accordingly, in our opinion, the procedural framework contained in the proviso to section 14(1) of the HMA can be pressed into service in relation to section 13B(1) of the HMA; and *in appropriate cases* the proviso to section 14(1) can be invoked to entertain the first motion, to save parties from remaining trapped in a manifestly unworkable matrimonial relationship. This would of course be subject to the court satisfying itself *inter-alia* as regards the considerations set-out in *Pooja Gupta*, as referred-to hereinbefore.
29. That being said, we would hasten to caution against wanton application of the proviso to section 14(1) of the HMA to cases under

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<sup>21</sup> 2020 (4) RLW 2717 (Raj.), para 29

<sup>22</sup> *Urvashi Sibal & Anr. vs. Govt. of NCT of Delhi*, 2010 SCC OnLine Del 18; *Mohin Saili vs. Nil*, 2010 SCC OnLine Del 4154; and *Sunny vs. Sujata*, 2012 SCC OnLine Del 2439



section 13B(1), so that the 01-year separation period for presenting the first motion is not rendered frivolous or perfunctory.

### **ANSWER TO LEGAL QUESTION No.2**

30. To answer this question, we would at the outset notice the opening words of section 13B(1) of the HMA, which begins with the phrase: “*Subject to the provisions of this Act*”, meaning thereby that the provisions of section 13B(1), *in their entirety*, are subject to the other provisions contained in the HMA. This aspect has been considered by the Division Bench in *Sankalp Singh*, the following paras of which judgment are instructive:

*“17. This aspect is sought to be reinforced by the wording of Section 13B of the said Act. Sub-section (1) of Section 13B of the said Act begins with “Subject to the provisions of this Act”. This would imply that the provisions of sub-section (1) of Section 13B of the said Act are subject to the provisions of the proviso to sub-section (1) of Section 14 of the said Act. The aspect of the requirement of alleging and establishing exceptional hardship and depravity is sought to be explained by suggesting a procedure that the parties may not like to allege against each other the aspects of such exceptional hardships but it can always be open to the parties, if they so agree, to jointly submit the same in a sealed cover as enclosure to an application under the proviso to sub-section (1) of Section 14 of the said Act in case of a petition under Section 13B of the said Act.*

*“18. In respect of the aforesaid as to what is meant by use of the expression “Notwithstanding anything contained in the Act” as contradiction to the phrase “Subject to the provisions of this Act” reliance has been placed on the judgement of the Supreme Court in Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, AIR 1987 SC 117 : (1986) 4 SCC 447. It has been explained that when a clause begins with the word “Notwithstanding” the object is to give it overriding effect over other provisions of the Act which is equivalent to saying in spite of those provisions the particular*



*clause would have a full operation. This in contra-distinction to the phrase “Subject to” which conveys that the provision would yield to another provision. The relevant discussion as contained in paras 68 & 69 is as under:*

*“68. A clause beginning with the expression “notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract” is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. See in this connection the observations of this Court in *South India Corpn. (P) Ltd. v. Secretary, Board of Revenue, Trivandrum* [AIR 1964 SC 207, 215 : (1964) 4 SCR 280],*

*69. It is well settled that the expression “notwithstanding” is in contradistinction to the phrase “subject to”, the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject. This will be clarified in the instant case by comparison of sub-section (1) of Section 15 with sub-section (1) of Section 15-A. We are therefore unable to accept, with respect, the view expressed by the Full Bench of the Bombay High Court as relied on by the learned Single Judge in the judgment under appeal.””*

(emphasis supplied)

31. However, it must be borne in mind, that when *Sankalp Singh* was pronounced, the law as it then stood prohibited the Family Court or the High Court from waiving the 06-month period stipulated in section 13B(2) of the HMA; which was perhaps the reason why the Division Bench in *Sankalp Singh* made a qualified order, as would be seen in the subsequent discussion.



32. However, there can be no cavil with the proposition that since section 13B(1) of the HMA begins, not with a *non-obstante* clause, but instead with a *subject-to* clause, the Legislature has, in so many words, made section 13B(1) subject to the other provisions of the HMA. Section 14(1) of the HMA is one such provision.
33. Now, the proviso to section 14(1) of the HMA permits the court to waive the 01-year period that is otherwise prescribed under section 14(1), prohibiting a court from entertaining *any petition* for dissolution of marriage until the expiration of 01-year *from the date of the marriage*. Such waiver of the 01-year period is however permitted *only* in cases of exceptional hardship or exceptional depravity, as referred-to in that proviso.
34. It must be noticed however, that when section 14 of the HMA was enacted, the provision for divorce by mutual consent under section 13B was *not* part of the statute, which (latter) provision was introduced by way of the amendment to the HMA in 1976. Therefore, section 14 as originally contemplated, applied (only) to contested divorce petitions filed under section 13 of the HMA, which were based on ‘fault-theory’. Also noteworthy is the fact, that simultaneously with the introduction of section 13B in the HMA *vidé* the 1976 amendment, permitting divorce by mutual consent, the Legislature also *reduced* the time period prescribed before a divorce petition could be presented under section 14, from 03 years to 01 year.
35. It begs the question however, that if waiver of the 01-year period is permissible in *contested cases*, then why should the same 01-year



period prescribed under section 13B(1) of the HMA be treated as sacrosanct or immutable, especially when parties approach the court seeking divorce by *mutual consent*.

36. What we see though, is that in *Sankalp Singh* the Division Bench has said that in cases of exceptional hardship or exceptional depravity, as contemplated in the proviso to section 14(1) of the HMA, the court may *entertain* the first motion for divorce by mutual consent before the 01-year separation period is over, *but* the second motion must be allowed and the divorce decree must be granted *only after* the parties have resided separately for at least 01-year, as contemplated in section 13B(1). *Sankalp Singh* also says that the 06-month gap stipulated between the first motion and the second motion, cannot be waived, since that was the extant position of law at that time. In effect therefore, in *Sankalp Singh*, what the Division Bench has done is to enforce the 01-year separation period, *not* at the stage of presentation of the first motion, but at the stage when the second motion is allowed and a divorce granted, by saying that the divorce decree would only take effect after the 01-year separation period is complete.
37. We are of the view that in order to give a purposive interpretation to the timeline stipulated in section 13B(1) of the HMA, due weight must also be accorded to the following real-life considerations, *for* and *against* permitting parties to seek waiver of that timeline, and to the consequences that befall couples who find themselves in difficult matrimonial relationships:



Arguments Supporting Waiver:

- (i) Compelling two consenting adults to remain legally tied in a matrimonial bond that has broken down – emotionally and/or physically – may constitute an infringement of their fundamental rights guaranteed under Article 21 of the Constitution, which provision *inter-alia* safeguards decisional autonomy, dignity, and privacy of an individual.
- (ii) In situations where the marriage has completely collapsed, particularly where matrimonial cohabitation was never initiated or subsisted only briefly, mandating adherence to a full 01-year separation period may inflict undue psychological and emotional distress upon the parties. Such a situation may reasonably be construed as falling within the ambit of “exceptional hardship” or “exceptional depravity” contemplated under the proviso to section 14(1) of the HMA.
- (iii) Judicial interpretation has already recognised that the minimum 06-month ‘cooling-off’ period under section 13B(2) of the HMA is *directory* and not *mandatory*.<sup>23</sup> Extending the same reasoning to section 13B(1) *in exceptional circumstances* would ensure consistency and coherence in matrimonial jurisprudence.
- (iv) In the contemporary social milieu, compelling parties to remain bound to each other for an extended statutory period, despite complete marital breakdown may inflict undue hardship and

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<sup>23</sup> *Amardeep Singh*, para 20



irreparably affect their individual future prospects, including prospects of remarriage and social reintegration.

Arguments Opposing Waiver:

- (i) The statutory requirement of 01-year separation is envisaged by the Legislature as time for reconciliation, intended to afford spouses sufficient time to reassess their relationship and prevent impulsive dissolution of a marriage. Waiving this period without sufficient restraint would undermine the legislative objective and intent.
- (ii) Excessive leniency in waiving the 01-year separation period could erode the sanctity, stability, and solemnity of the institution of marriage, which holds significant social and cultural value in India.
- (iii) The absence of a statutory separation period may increase the risk of parties acting under external influence—whether familial, societal, or otherwise—thus potentially compromising the voluntary nature of their mutual consent to the divorce.
- (iv) Curtailing or eliminating the 01-year separation requirement may render divorce procedurally easier, potentially leading to a rise in divorce petitions, particularly those stemming from transient conflicts that arise from the rough-and-tumble of matrimonial life. This could have a wider impact on societal perceptions concerning the sanctity of marriage and might inadvertently promote hasty resort to dissolution over reconciliation.





38. As we see it, the essential cornerstones of the law on divorce by mutual consent, are the following:
- 38.1. The 01-year separation period prescribed under section 13B(1) of the HMA has been held to be a pre-requisite for seeking divorce by mutual consent.<sup>24</sup>
- 38.2. The proviso to section 14(1) of the HMA *is applicable* to proceedings under section 13B(1) of the HMA and can be invoked in proceedings for divorce by mutual consent.<sup>25</sup>
- 38.3. All concerned courts, namely the Family Court and the High Court, *can* in appropriate cases, waive the 06-month *cooling-off* period prescribed under section 13B(2) of the HMA.<sup>26</sup> This has been further elaborated by the Supreme Court in *Amit Kumar*, observing that the factors indicated in *Amardeep Singh* are not exhaustive and also laying down 08 other factors which should also be considered while deciding to waive the 06-month period.<sup>27</sup>
- 38.4. Though the above-referred decisions concern the power of the Family Court and the High Court to waive the 06-month period under section 13B(2), as discussed hereinafter, there is no reason, muchless any legal bar, why the Family Court and High Court should not also have the same power in relation to the 01-year separation period prescribed under section 13B(1) of

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<sup>24</sup> *Sureshta Devi*, para 8

<sup>25</sup> *Sankalp Singh*, para 30

<sup>26</sup> *Amardeep Singh*, paras 19 and 20

<sup>27</sup> *Amit Kumar*, paras 20 and 26



the HMA. It is also noteworthy that in *Amardeep Singh*, the Supreme Court held that the timeline prescribed under section 13B(2) of the HMA is directory even though the phrase “*Subject to the provisions of this Act*” appears only in section 13B(1) and not in section 13B(2). Therefore, in *Amardeep Singh*, the Supreme Court has held that the 06-month cooling-off period before filing of the second motion can be waived even without reference to the proviso to section 14(1) of the HMA.

39. It needs no reiteration that law, especially law relating to personal affairs, must keep pace with the changing times. The manner in which the law has moved forward in *Sankalp Singh*, in *Amardeep Singh* as well as in *Amit Kumar*, the trend of the law has been in favour of relaxing timelines prescribed under section 13B(1) and (2) of the HMA.
40. In our opinion, the essential ingredient of section 13B of the HMA is the ‘consent of parties’, and not the timelines set-out in that provision.
41. We may clarify, that we are not suggesting that the 01-year period stipulated in section 13B(1) of the HMA should be waived for the asking; but subject to the court being satisfied on the touchstone of the indicative considerations and factors set-out by a Single Judge of this court in *Pooja Gupta*,<sup>28</sup> we are of the view that it is permissible for a court, whether the Family Court or the High Court, to waive that period for entertaining the first motion. The purpose of that exercise

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<sup>28</sup> Subsequently followed by the Division Benches of the Rajasthan High Court in *Kuldeep Singh Shekhawat* and *Nitish Agarwal*



must be for the court to satisfy itself as to existence of *free* and *deliberated* consent of the parties.

42. This court would also go a step further, to say that waiving the period of 01-year *would not*, in and of itself, disentitle the court from *also* waiving the 06-month period prescribed under section 13B(2) of the HMA. In fact waiver of the 01-year period under section 13B(1) and waiver of the 06-month period under 13B(2), must be treated as two separate and distinct aspects; but waiver of one timeline would not preclude waiver of the other.
43. We have already noticed that in *Amardeep Singh* the Supreme Court has held that the 06-month cooling-off period as prescribed under section 13B(2) of the HMA is not mandatory but directory, and has laid-down certain circumstances in which such period may be waived by the court. This principle was further expanded by the Supreme Court in *Amit Kumar*. Therefore, merely because, based on certain exceptional circumstances the court decides to exercise its powers under the proviso to section 14(1) of the HMA to waive the period of 01-year before the first motion can be presented by the parties, that would not denude the court of its power to also waive the cooling-off period between the first motion and the second motion.
44. However, we must hasten to add that there can be certain cases where the court, in its discretion, decides that though it would entertain a petition before expiration of the 01-year period of separation, it would be appropriate to give more time to the parties to reconsider their decision; and may refuse to grant them exemption from adhering to the mandatory 06-month cooling-off period.



45. To put to rest any emotive argument against hasty dissolution of a marriage, we would only say that though a marriage is most certainly a solemn commitment, however once spouses mutually agree to end their union, the law must not interfere in their decisional autonomy. Since a marriage must necessarily be the result of free consent between adults, a divorce by mutual consent should also not be obstructed, thrusting unwilling parties – *not into marital bliss, but into a matrimonial abyss*.
46. In the passing, it may also be observed that when a petition for divorce is presented with consent of parties, who aver that they have been living separately for a period of 01-year or more, the only circumstance in which the period of separation can be *verified* is if the marriage itself is of less than 01-year vintage. In all other cases, the mere consensual assertion of the parties is sufficient to fulfil the requirements of section 13B(1) of the HMA and cannot be second-guessed. In a sense therefore, verification of the 01-year separation period in section 13B(1) is all but illusive.
47. In our opinion therefore, the view that the timeline stipulated in section 13B(1) of the HMA is immutable, would render the opening words of section 13B of the HMA—viz., that the section is *subject to the other provisions of the statute* – nugatory. We must remind ourselves, that on first principles, a court must never presume that the Legislature has wasted its words or that any words used in a statute are superfluous or redundant.<sup>29</sup>

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<sup>29</sup> *B.D. Shetty & Ors. vs. CEAT Ltd. & Anr.* (2002) 1 SCC 193, para 11



48. As a sequitur of the above discussion, we agree with the view taken by the Division Bench of this court in *Sankalp Singh*, insofar as it holds that a petition under section 13B(1) of the HMA *can be entertained* even before parties have lived separately for a period of 01-year.
49. However, we differ from the view taken in *Sankalp Singh* when the Division Bench says that in order to satisfy the pre-requisite under section 13B(1) of the HMA, if the first motion is entertained and allowed *before* the parties have lived separately for at least 01-year, the second motion *must only be allowed* and a divorce decree *can only be granted after* the period of 01-year of separation is complete. It must be understood that at the time *Sankalp Singh* was pronounced, viz., in 2013, it was impermissible to waive even the 06-month period under section 13B(2); and the law that the 06-month period could be waived came by way of the Supreme Court ruling in *Amardeep Singh* only in 2017. In our reading of *Sankalp Singh*, it was in these circumstances that the Division Bench held that though the proviso to section 14(1) applies even to petitions under section 13B, the first motion may be entertained and allowed; but the second motion can only be allowed and a decree of divorce granted *after* the 01-year of separation period under section 13B(1) has elapsed. Considering the manner in which the law has progressed since 2013 however, we disagree with the view taken in *Sankalp Singh* on that aspect; and we hold that the second motion may be *entertained and allowed* and a divorce decree may also be *granted* even *before* parties have lived separately for a period of less than 01-year *subject to*:



- (i) the court being satisfied that the circumstances envisaged in the proviso to section 14(1) of the HMA viz., of exceptional hardship or exceptional depravity, exist; and
- (ii) the court also testing the case on the anvil of the indicative considerations set-out in *Pooja Gupta*.

The contrary view taken in *Sankalp Singh*, is, to that extent, set-aside.

50. We may further explain the reasons for our disagreement with *Sankalp Singh*. As narrated above, the rationalé for the Division Bench holding that the second motion can be presented but the “*decree of divorce would only be granted once the period of one (1) year has elapsed from the separation*”<sup>30</sup> was to fulfil the pre-requisite set-out in section 13B(1) of the HMA. However, we are of the view that once the court is satisfied that parties have made-out a case on the touchstone of what we have observed above; *and* the court decides to entertain the first motion before expiry of the 01-year separation period; *and* the parties have also made-out a case for waiver of the 06-month cooling-off period for presenting the second motion; *and* the court is also convinced that divorce *should be granted* on mutual consent, we see no justification whatsoever for the court to withhold the passing of the divorce decree till the 01-year separation period is completed.
51. As a matter of fact, a closer reading of the proviso to section 14(1) of the HMA would show that the option of deferring the effect of a

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<sup>30</sup> *Sankalp Singh*, para 30



divorce decree was contemplated by the Legislature only in certain circumstances. The proviso to section 14(1) may be noticed:

**14. No petition for divorce to be presented within one year of marriage.**- (1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage:

*Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of one year from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after expiration of the said one year upon the same or substantially the same facts as those alleged in support of the petition so dismissed.*

(emphasis supplied)

52. It is clear therefore, that the Legislature has *not mandated* that if a court has decided to grant a divorce decree, it must hold that the decree shall not have effect until after expiry of a period of 01 year from the date of marriage. Instead the Legislature has used the word 'may', to say that "..... *if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition*





*that the decree shall not have effect until after the expiry of one year from the date of the marriage.....". The provision therefore contemplates, that a decree passed may be made effective from a later date *only* if the court finds that the petitioner has obtained leave to present the first motion by misrepresentation or concealment. It is not the purport of the proviso to section 14(1) that *every* decree of divorce obtained prior to the expiration of the period of 01 year *must be made effective from a later date*, as appears to have been erroneously construed or implied in *Sankalp Singh*.*

53. In fact, where the court finds that there was *no* misrepresentation or concealment in obtaining the leave to file the first motion before expiry of the 01-year separation period, holding the divorce decree in abeyance till a later date would amount to the court adopting a conflicted position, inasmuch as, despite being satisfied that the exceptional circumstances contemplated in the proviso of section 14(1) exist, the court would yet keep two unwilling persons tied in matrimony.
54. It may be necessary to articulate, that even where spouses file for divorce by mutual consent, their wish to part-ways would always be rooted in some basis or reason, though they may have chosen to adopt the consensual route for divorce. In such circumstances, it would be wholly undesirable to keep spouses embroiled in a bad marriage, instead of releasing them from the matrimonial bond. It hardly needs enunciation that such a situation would inflict undue psychological and emotional distress on one or both spouses, and that in itself may qualify as exceptional hardship on them.



55. In certain cases, delaying the obliteration of the matrimonial bond may lead to one or the other spouse being unable to form a meaningful relationship with someone else, which would affect their future prospects irreparably, including prospects of remarriage and social integration. In the face of such a situation, the argument opposing waiver of the statutory period, even though envisaged by the Legislature as a period for reconciliation, would pale into insignificance since all relationships cannot be mended.
56. Though there is no doubt that the sanctity, stability, and solemnity of the institution of marriage holds social and cultural significance in our society, however where the spouses are *ad-idem* that their marriage must be ended, efforts to save a broken marriage would give primacy to outward social pretense at the cost of autonomy and dignity of the affected couple.

### CONCLUSIONS

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;

- 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.



58. The reference is answered accordingly.
59. We would conclude by expressing our sincere gratitude to Mr. Rajshekhar Rao, learned senior counsel and *Amicus-Curiae*, ably assisted by Ms. Aashna Chawla, Mr. Ajay Sabharwal, Mr. Wamic Wasim Nargal and Mr. Zahid Laiq Ahmed, Advocates; and Mr. Saurabh Kansal, Advocate, all of whom have rendered invaluable assistance in the matter.

**ANUP JAIRAM BHAMBHANI, J.**

**NAVIN CHAWLA, J.**

**RENU BHATNAGAR, J.**

**DECEMBER 17, 2025**

*V.Rawat/ss/ds/ak*