

THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 25.08.2025

Order pronounced on : 04.09.2025

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.No.4013 of 2025

1.Shivkarthik G.S
2.M.Swetha Pierce

..Petitioners

Vs.

Nil

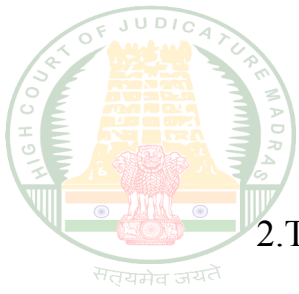
..Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Docket order dated 10.07.2025 passed by the Family Court, Coimbatore in DOP.CFR.No.3726 of 2025.

For Petitioners : Mr.G.R.Deepak

ORDER

The revision petitioners are husband and wife, they had moved the Family Court, Coimbatore, seeking mutual divorce, invoking Section 10(A) of the Indian Divorce Act.



2.The said OP was filed on 16.04.2025. The learned Family Court has returned the petition on 21.04.2025, stating that the petition filed before completion of two years from the date of separation is not maintainable. According to the petitioners and also as seen from the petition filed under Section 10A, the date of separation is 01.01.2025.

3.The return of the OP was challenged before this Court in CRP.No.1915 of 2025 and this Court, by order dated 29.04.2025, directed the petitioners to represent the papers before the Family Court, Coimbatore. It is thereafter that the petitioners have represented the mutual consent divorce petition. However, by docket order dated 10.07.2025, the Family Court, Coimbatore, has held that the mandatory one year period of separation under Section 10A(1) of Indian Divorce Act cannot be dispensed with. Aggrieved by the same, the present revision petition has been filed.

4.The learned Counsel for the petitioners, Mr.G.R.Deepak, would state that the parties have agreed to present the mutual consent divorce petition on account of irreconcilable differences and misunderstandings and also in view of the marriage having been irretrievably broken down. The learned counsel for



the petitioners would fairly state that the date of separation is only on 01.01.2025 and the mandatory period of one year of separation has not lapsed in the present case.

5.The learned counsel for the petitioners, relying on the decision of the Kerala High Court in *Anup Disalva and Another vs Union of India*, reported in 2022 SCC Online Ker 6415, would contend that the provisions of Section 10A, setting out the mandatory waiting period has been struck down by the Honourable Division Bench of the Kerala High Court as unconstitutional and violative of fundamental rights. He would therefore state that the said decision is binding on the Family Court and the Family Court has erroneously held that unless there is a dictum of this Court, the Family Court is not obliged to rely on the ratio laid down by the Division Bench of the Kerala High Court.

6.The learned counsel for the petitioner would also rely on the decision of the Honourable Supreme Court in *Shilpa Sailesh vs Varun Sreenivasan*, reported in 2023 (14) SCC 231, where the Honourable Supreme Court has held that mandatory six months waiting period under Section 13B of the Hindu Marriage Act can be dispensed with by the Courts, upon circumstances shown



to the satisfaction of the Court. The learned counsel would therefore pray for the

order of the Family Court being set aside and a direction to be issued to the Family Court, Coimbatore to number the mutual consent divorce petition.

7.I have carefully considered the submissions advanced by the learned counsel for the petitioners, Mr.G.R,Deepak.

8.The only point that arises for consideration is whether the mandatory waiting period of one year from the date of separation has to be compulsorily sat through by the parties, who have already decided to part ways, by filing a mutual consent divorce petition. The Division Bench of the Kerala High Court in *Anup Disalva's case*, took note of an earlier decision of the Division Bench of the Kerala High Court in *Saumya Ann Thomas vs Union of India* reported in *2010 SCC Online Kerala 5197* and held that the stipulation of a period of two years being a minimum mandatory period under Section 10A is arbitrary and oppressive and that the said two year period has to be read as one year, taking into account the one year period stipulated in similar legislations namely the Special Marriage Act (Section 28(1)) Hindu Marriage Act (Section 13B(1)) and Parsi Marriage Act (Section 32B(1)).



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9. The Honourable Division Bench further took note of the fact that an application for divorce by mutual consent presented by both the husband and wife reflects the will of the parties to separate and get rid of the marriage. The Honourable Division Bench taking note of the entitlement of a spouse to file a petition for divorce under Section 10 on other available grounds, without any waiting period and the entitlement and power of the Court to grant a divorce, even before the period of one year, subject to being satisfied with the ground seeking divorce being made out, held that, while that is the position even for a contested proceeding before the Court, there can be no spokes put, impeding the parties from seeking divorce by mutual consent. The Honourable Division Bench, in fact, declared the stipulation of one year period or more, for the purposes of filing a divorce by mutual consent under Section 10A, as violative of fundamental rights and declared it to be unconstitutional.

10. Though said judgment of the Kerala High Court may not have a binding precedentiary value before this Court, the judgment will definitely have persuasive value, for this Court to take note of the ratio laid down by the Honourable Division Bench.

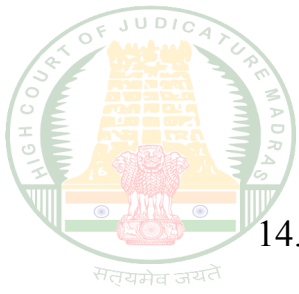


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11. Even otherwise, the Honourable Supreme Court, in *Shilpa Sailesh's* case, has clarified the ratio laid down in *Amardeep Singh v. Harveen Kaur*, reported in 2017 (8) SCC 746, and held that the Courts can always waive the cooling period of six months under the Hindu Marriage Act to enable the parties to obtain a divorce by mutual consent, earlier.

12. However, the Family Court has relied on *Amardeep Singh's* case, to hold that the one year separation period is mandatory under section 13B(1) of the Hindu Marriage Act and therefore similarly even under the Divorce Act the cooling period cannot be condoned or waived.

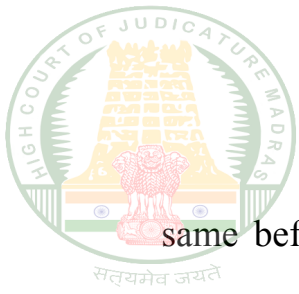
13. In fact, the Hon'ble Division Bench of Kerala High Court found that there was no remedy provided in the statute to provide for a spouse to approach the Courts to even get rid of the minimum period, even when there were exceptional and depraved conditions warranting such period to be waived. The Hon'ble Division Bench also held that the waiting period was only to enable the parties to rethink on the decision of mutual separation and nothing more.



14. The very same view has also been expressed by Hon'ble Supreme Court in *Shilpa Sailesh's case*, where the Hon'ble Supreme Court, no doubt, dealing with the power of Courts to waive the mandatory six months cooling period under Section 13B of the Hindu Marriage Act, held that when the Courts are satisfied that there is no useful purpose in forcing or compelling the parties to sit through the cooling period, when they have already come to a decision and all relevant factors have been taken into account, then the Courts can waive the said cooling period.

15. The ratio laid down by the Honourable Division Bench is also on the very similar lines on which the Hon'ble Supreme Court has clarified that the Courts retain a power to waive the cooling period under Section 13B.

16. Even though there is no decision of this Court toeing the same lines of the Kerala High Court, striking down the provisions of Section 10A regarding the mandatory waiting period, considering the import of the decision of the Hon'ble Supreme Court in *Shilpa Sailesh's case* as well as the Hon'ble Division Bench in the Kerala High Court, the Family Court is certainly entitled to waive the mandatory waiting period and cannot compel the parties to sit through the



same before presenting a petition for divorce in the form of mutual consent, under Section 10A of the Divorce Act.

17.Independently, I also find that both the petitioners have filed separate affidavits even in this revision, affirming their decision to go separate ways. The interest of any children is also not involved in the present case, since the parties were not blessed with any issues and both the petitioners have categorically asserted that the relationship has become irreconcilable and distressing. In such circumstances, compelling the petitioners to wait for the mandatory period to expire would only further increase their agony. The petitioners have also stated that their decision is voluntary and only based on their free will and there is no fraud, collusion or undue influence brought upon them to file the mutual consent divorce petition.

18.In the light of the above, I am inclined to set aside the docket order of the Family Court, Coimbatore, and I direct the Family Court, Coimbatore, to number DOP CFR.No.3726 of 2025, if it is otherwise in order. The Family Court, Coimbatore, shall not return / reject the petition on the ground that the parties have to wait for the mandatory period of one year from separation to



pass off, before they are entitled to file an application for divorce by mutual consent.

19. With the above observation and direction, the Civil Revision Petition is allowed. There shall be no order as to costs.

04.09.2025

Speaking/Non-speaking order
Index : Yes/No
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To

The Family Court, Coimbatore.



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P.B.BALAJI.J.

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Pre-delivery order made in
CRP.No.4013 of 2025

04.09.2025