

**IN THE COURT OF THE DISTRICT JUDE**  
**DIBRUGARH**

**Title Suit (M) No. 63 of 2021**

Smt Kriti (Mala) Gupta  
W/o Sri Parash Nath Gupta and  
D/O Sri Kashi Nath Gupta  
R/O Dergaon, (near Govt Bus stand)  
PO and PS Dergaon  
District-Golaghat, Assam

... First petitioner

And

Sri Parash Nath Gupta  
S/o Late Nebulal Gupta  
R/O Jamira DakGhar, MattakGaon  
PO and PS Barbarua  
District Dibrugarh, Assam

...Second petitioner

Advocate for the petitioners : Sri Prakash Ch. Sharma  
Sri Tarun Gogoi

Date of Hearing : 4-12-2021.

Date of Judgment : 4-12-2021.

**ORDER**

1. Petitioners, Smt Kriti (Mala) Gupta and Sri Prakash Nath Gupta have filed the instant petition u/s 13 B of the Hindu Marriage Act, 1955 for dissolution of their marriage by a decree of divorce by mutual consent.

2. The petitioners have contended that their marriage was solemnised as per Hindu rites on 27.2.2009, whereafter they lived together as husband and wife. The petitioners have stated that over a period of time, incompatibility between the parties showed up and ultimately they started living apart since more than eighteen months. It has been stated that the parties

realised that it was not possible for them to live together and hence they have decided to mutually dissolve their marriage.

3. The instant petition was filed on 4-12-2021.

4. Both the petitioners are present in the Court today on 4-12-2021 and have filed affidavit reiterating their desire to separate. The petitioners stated that they have filed the instant petition voluntarily without any force or undue influence and there is no collusion between them. It has been also submitted that they do not have any demand against each other. It has been further stated that out of the said wedlock a female child was born on 15.9.2010 who is residing with the petitioner No.1 and that the petitioner No.1 will continue to have a custody of the child.

5. I have heard the Learned Counsel for the petitioners and perused the materials on record.

6. It is apparent that marriage between the parties was solemnised in the year 2009 but subsequently due to differences they started living separately. The petitioners have not lived together for more than eighteen months and they are living separately, till date. Seeing no scope for their reunion, the petitioners have instituted the present petition u/s 13 B of the Hindu Marriage Act, 1955.

7. Vide petition No. 2070/2021, prayer has also been made that the waiting period of 6 (six) months as provided u/s 13 B (2) of the Hindu Marriage Act, 1955 be waived, in as much as, the parties have been living separately for the last three years and that any further waiting period would only increase their agony.

8. Section 13 B (2) provides that on receipt of a petition for divorce on mutual consent, the Court shall fix a date after six months. However, Hon'ble Supreme Court of India in the case of **(2017) 8 SCC 740 Amardeep Singh v. Harveen Kaur** while holding that "the period of six month waiting is not mandatory " further laid down that the following be looked into for waiving the period of six months waiting period:

*"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."*

9. Thus, it has been construed that the provisions made u/s 13-B (2) of the Hindu Marriage Act, 1955 is not mandatory rather discretionary, subject to the condition that parties must live separately for at least 18 (eighteen) months i.e. 12 (twelve) months as required u/s 13-B (1) and 6 (six) months as required u/s 13-B (2) of the Hindu Marriage Act, 1955.

10. Ld Counsels for the parties have submitted that in the interest of both the parties, the marriage between the parties which has, for all intents and purposes broken down since before the filing of the instant petition, be formally dissolved without further delay.

11. I have perused the materials on record and heard the Ld Counsels. It is apparent that both the parties have been living separately for more than two years.

12. Both the petitioners are present in the Court today and reiterated their desire to separate mutually through the evidence filed by them in the Court today. The parties deposed that they have filed the instant petition voluntarily without any force or undue influence and there was no collusion between them.

13. In the instant case, the parties have been living separately for more than last two years, hence it is obvious that there is no scope for their reconciliation. The marriage between the parties has in fact, broken down irretrievably and there is no scope of the parties coming together as husband and wife. The consent given by the parties for mutual divorce appears to be voluntary and does not appear to be induced by any force, fraud or undue influence from any quarter.

14. Considering the fact that there is no possibility of reunion between the parties, this Court is of the considered view that if the parties are to wait for another 6 (six) months as required u/s 13 B (2), the same will prolong their agony. As the parties have settled their disputes, this Court is of the opinion that it is a fit case for waiving the waiting period of 6 (six) months as required u/s 13 B (2), which I accordingly do.

15. Prayer to dissolve the marriage on mutual consent stands allowed. Marriage solemnized between Smt Kriti (Mala) Gupta and Sri Prakash Nath Gupta is dissolved on mutual consent. Parties to bear their own cost.

16. Prepare a decree within 15 days from today.
17. Suit is disposed of uncontested.

Given under my hand and seal of this Court on this the 3<sup>rd</sup> day of December, 2021 at Dibrugarh.

District Judge  
Dibrugarh