

Assam Schedule VIII. Form No. 143  
High Court Form No. (J) 13

**ORDER-SHEET FOR CIVIL COURT**

DISTRICT : SONITPUR

**IN THE COURT OF THE DISTRICT JUDGE, SONITPUR, TEZPUR**

**T.S. (M) Case No. 58 of 2021**

**Sri Sadananda Das**

**Vs**

**Smti Junika Kerketta**

Serial No. of Orders	Date	Order	Signature
	<b><u>25-08-2021</u></b>	<p>This is an application u/s 28 of the Special Marriage Act, 1954 praying for dissolution of marriage by decree of divorce on mutual consent.</p> <p>On <b>21-05-2019</b> in a auspicious moment two persons namely, Sri Sadananda Das and Smti Junika Kerketta tied their nod by executing a registered deed of Marriage in the Office of the District Marriage Officer Sonitpur, Tezpur with the dream of living together as a husband and wife for the rest of their life.</p> <p>After solemnization of marriage under Special Marriage Act, authority issued Marriage Certificate No. 502 dated 21-05-2019 but after the marriage both petitioners started living separately at their own residence with mutual consent.</p> <p>It is seen that after the marriage both the petitioners found that their temperaments, habits, thoughts and understanding were different to each other and due to these some serious disputes and differences started building up between the petitioners as a result differences grew between the parties. After marriage they are living separately from each other and there was no consummation of conjugal life which force them to go for decree of divorce by mutual consent as they finally want</p>	

to wash the dirty linen for the rest of their life.

Now, there is absolutely no chance for reconciliation, re-union or co-habitation as they are living separately. There is no force, threat or coercion on the part of either side in coming to such mutual agreement. It is stated that the petitioner No. 2 has no claim from the petitioner No. 1 in the form of permanent alimony or monetary relief whatsoever.

Since, petitioners are no longer in sweet terms for more than 2 (two) years as they are living separately since their marriage i.e. 21-05-2019 and there is no consummation of conjugal life between them and there is no chance of any reconciliation or consummation of conjugal life in future, the desire of the party is to get rid of from the life of each other for the rest of their life.

Also seen the petition No. 1090/2021 for waiver of six months cooling period. The divorce petition has been presented on 29-04-2021 and the petition for waiving the cooling off period has been presented after almost 4 (four) months of presenting the aforesaid petition. In the matter of consideration of waiving the cooling off period u/s 13B (2) of Hindu Marriage Act, 1955 a division bench of Hon'ble Supreme Court comprising Justices A.K. Goel and U.U. Lalit in CIVIL APPEAL NO. 11158 OF 2017 Amardeep Singh ...Appellant Versus Harveen Kaur ...Respondent held in paragraph No.18 to 21 as under:

*"18. 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 13B(2), it can do so after considering the following:*

*i) the statutory period of six months specified in Section 13B(2), in addition to the statutory period of one year under Section 13B(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 XXXIIA 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.*

*19. The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver.*

*20. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court.*

*21. We are of the view that the period mentioned in section 13B(2) is not mandatory but directory; it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation."*

In view of the above clear position of law and the facts narrated by the petitioner in petition No. 1090/2021, there is no specific bar in waiving the cooling off period of six months u/s 28 (2) of Special Marriage Act, 1954 this court after hearing the parties and after making enquiries is satisfied that there is no impediment in waiving the cooling off period of six months as provided in Section 28 (2) of Special Marriage Act, 1954.

This Court, therefore, after giving anxious consideration into all the facts presented by the parties comes to unerring conclusion that the ultimate relief to the parties is grant of decree of divorce by mutual consent and there seems to be no legal impediment in giving the stamp

	<p>of approval to the desire of the petitioners. Therefore, the decree of divorce by mutual consent as sought by the parties is hereby accorded. In the result, the Marriage Certificate No. 502 dated 21-05-2019 issued by District Marriage Officer, Sonitpur stands cancelled as of having no effect from today.</p> <p>Prepare the decree accordingly.</p>	<p><b>(C.B. Gogoi)</b> <b>District Judge</b> Sonitpur, Tezpur</p>
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