

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. 112 of 2021**

**Sri Chandan Mandal**

**Vs**

**Smti Sima Biswas**

Serial No. of Orders	Date	Order	Signature
	<b><u>19-01-2022</u></b>	<p>This is an application u/s 13(B) of Hindu Marriage Act, 1955 for dissolution of marriage by decree of divorce by mutual consent.</p> <p>Learned counsel for petitioners submitted a petition No. 307/2022 praying that due to clerical/ typing error the date of separation has been written in the main petition in para No. 4 and 13 as 15-04-2021 instead of 15-04-2020. So, it is necessary to rectify the separation date between the petitioners as 15-04-2020.</p> <p>Seen and heard the learned counsel appearing for petitioners. Accordingly, prayer is allowed.</p> <p>The Bench Assistant is directed to rectify the abovementioned error in red ink.</p> <p>Further, in the main petition, it is specifically pleaded that the marriage between the Petitioner No. 1 Sri Chandan Mandal and Petitioner No. 2 Smti Sima Biswas was solemnized on <b>25-01-2020</b> according to Hindu Rites and Customs, however, they have no issue. Pleading reveals that after their marriage disputes started to grow because of incorrigible and irreconcilable temperament, attitude, different ideas, habits, tastes and thoughts of both sides. Since <b>25-04-2020 (rectified as prayed in the petition No. 307/2022)</b> both parties living</p>	

separately and accordingly, there is no marital tie/relationship between the parties anymore. Despite mediations by close relatives and well wishers it has become impossible for the petitioners to live together as husband and wife anymore as their relation reached the point of no return.

It is further pleaded that now both the petitioners out of their own free will/accord broke the marital relationship and both intend to withdraw themselves from their company and since 25-04-2020 both the petitioners are living separately at their own residences. There is absolutely no chance for reconciliation, re-union or co-habitation for which they mutually agreed that the marriage should be dissolved. 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 and petitioner No. 1 already gave back all the Stridhan to the petitioner No. 2.

It is also prayed in the main petition that as both parties living separately since 25-04-2020, the court may not wait for the statutory period of six months and allow them to part their ways with a decree of divorce forthwith. In the matter of consideration of waiving the cooling off period u/s 13(B)(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 the main petition and the period of their separation from each other, this court is of the view that there is no impediment in waiving the cooling off period of six months as provided in Section 13(B)(2) of Hindu Marriage Act.

Subsequently, both parties being personally present in Court and filed joint application stating the same fact as has been pleaded in the petition thereby corroborating

their joint wish/desires.

Therefore, this Court is fully convinced that petitioners have voluntarily agreed to dissolve their marriage by mutual consent and there is no need to further waste time at the peril of the petitioners.

Accordingly, having been fully satisfied in all respect, the decree of divorce by mutual consent as sought by the parties is hereby granted.

Prepare the decree accordingly.

The case is accordingly disposed off.

**(C.B. Gogoi)**  
**District Judge**  
Sonitpur, Tezpur