

Court No. - 6

Case :- MATTERS UNDER ARTICLE 227 No. - 6088 of 2023

Petitioner :- Avinash Pratap Singh

Respondent :- Ld. Principal Judge, Family Court, Distt. Pratapgarh And Another

Counsel for Petitioner :- Shantanu Sharma, Ajay Kumar Ojha, Anshuman Sharma, Athar Ali

Hon'ble Rajnish Kumar, J.

Sri Prabhat Kumar Ojha, Advocate holding brief of Sri Ajay Kumar Ojha, learned counsel for the petitioner submits that the petitioner and the respondent no.2 have filed Regular Suit No.791 of 2023, under Section 13B of the Hindu Marriage Act 1955 for divorce by mutual consent on 21.09.2023 and for the second motion, the date has been fixed for 24.03.2024. Therefore he prays that the family court may be directed to waive off the cooling period and decide the Regular Suit. He relies on judgment of the Hon'ble Supreme Court in the case of Amit Kumar versus Suman Beniwal; Civil Appeal No.7650 of 2021.

Having considered the submission of learned counsel for the petitioner and gone through the records, this Court is of the view that the application for waiving off of the cooling period can be moved before the family court, who may consider the same in accordance with law. So far as the judgment relied by learned counsel for the petitioner is concerned, in the said case also the application for waiving off the cooling period was moved before the family court but the same was dismissed and the petition filed by the applicant before the High Court was dismissed. Therefore the Hon'ble Supreme Court after considering the matter and exercising its powers under Article 142 of the Constitution of India waived off the cooling period and allowed the divorce petition, which cannot be done by this Court.

In view of above the petition is misconceived because admittedly, no application for waiving off the cooling period has been moved before the family court.

Dismissed accordingly.

Order Date :- 5.12.2023
Akanksha