

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1683 of 2015

Smt. Neha Kapoor W/o Ankur Sahu Aged About 30 Years R/o D-7, Pankaj Vikram Apartment, Shailendra Nagar, Raipur , Civil & Revenue District Raipur Chhattisgarh.

---- Applicant

Versus

Ankur Sahu S/o Shri Ravishankar Sahu Aged About 29 Years R/o L.I.G. 45, Dindayal Colony, Junvani Bhilai, Raipur, Civil & Revenue District Durg Chhattisgarh.

---- Respondent

Shri Abdul Wahab Khan, counsel for the petitioner/s.

Order On Board

18/09/2015

Heard.

This petition, under Article 227 of the Constitution of India, is preferred against order dated 02/09/2015 by which, the Court below has rejected petitioner's prayer for passing decree of divorce by mutual consent at this stage and has directed conciliation to be held on 23/07/15.

2. Learned counsel for the applicant submits that in view of extra ordinary situation on the facts of the present case, where all attempts of conciliation have failed though conciliation meeting had taken place on 05/05/14, 27/06/14, 07/08/14, 28/08/14, 08/09/14 and 12/09/14, the statutory cooling period of six months is not required to be complied with and the Family Court ought to have proceeded to pass decree of divorce on the basis of mutual consent. The other submission is that even if the Court has to wait till expiry of six months of statutory cooling period, there is no justification for directing any conciliation to be drawn.

3. The legal position with regard to minimum statutory cooling period has been settled in plethora of decisions and in the case of **Anil Kumar Jain v. Maya Jain, (2009) 10 SCC 415** also, it has been held that six months

statutory cooling period has to be provided before the Court can pass a decree on the basis of mutual consent of the parties. Learned counsel for the petitioner has relied upon decision in the case of **Devinder Singh Narula v. Meenakshi Nangia, 2012 (8) SCC 580**. In the aforesaid decision, Hon'ble Supreme Court invoked its jurisdiction under Article 142 of Constitution of India.

4. In view of the law laid down by the Supreme Court in the case of **Anil Kumar Jain (Supra)**, the order passed by the Court below that the prayer for grant of decree on the basis of mutual consent would be considered only after expiry of statutory cooling of six months cannot be faulted with.

5. It has been stated that despite number of mediation proceedings drawn in the past, there was no occasion for the Family Court to again direct conciliation proceedings.

6. I find that conciliation proceedings have been directed to be held today.

In that view of the matter, I need not comment upon this, particularly taking into consideration that the statutory cooling period of six months is still continuing which would expire in six months from the date of filing of application for grant of decree on the basis of mutual consent.

7. Learned counsel for the petitioner, in the last, submitted that immediately after expiry of period of six months, the Court below may be directed to pass appropriate order.

In that regard, I am not inclined to pass any order, as on the date, the prayer is premature.

Obviously, parties have moved application with mutual consent and if in the meantime, there is no other development taking place towards re-union between the parties, the Family Court is expected to proceed with the matter and pass appropriate order in accordance with law.

8. The petition is accordingly finally disposed off.

Sd/-

Manindra Mohan Shrivastava
Judge