

HIGH COURT OF CHHATTISGARH, BILASPUR**FA (M) No. 18 of 2015**

- Smt. Yogita Bali Sahu, aged about 29 years, wife of hemant Sahu, resident of hasda NO. 2, Tahsil and Police Station-Abhanpur, District-Raipur (C.G.)

---- Appellant**Versus**

- Hemant Sahu, aged about 35 years, son of Shri Balmukund Sahu, resident of Village-Charmudiya, Tahsil and Police Station-Kurud, District-Dhamtari (C.G.)

---- Respondent

For Petitioner	:-	Shri D. N. Prajapati, Advocate
For the Respondent	:-	Shri Ajay Chandra, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Arvind Singh Chandel

Judgment on Board By
Prashant Kumar Mishra, J.

19-09-2017

1. Heard.
2. The parties have moved an application(IA No.01) for grant of divorce by mutual consent without captioning the application as one under Section 13-B of the Hindu Marriage Act, 1955 (henceforth 'The Act of 1955').
3. The suit was initially preferred by the appellant/wife for grant of a decree of divorce under Section 13 (1) (i-a) of the Act of 1955, which has been dismissed by the trial Court
4. The present application for divorce by mutual consent was preferred on 09.07.2015 with signatures and affidavits of both the parties. It was listed before the Court on four occasions, but for some or the other reasons, orders could not be passed.
5. Ordinarily, a prayer of such nature is made by way of an independent and separate application before the Court of competent jurisdiction, however,

considering the fact that the divorce petition was preferred in the month of January, 2013 with the averments that the parties are not residing together since January, 2008, we proceed to take up the application in this pending appeal itself.

6. In a recent decision rendered by the Supreme Court in the matter of **Amardeep Singh Vs. Harveen Kaur in Civil Appeal No 11158 of 2017 decided on 12.09.2017**, it has been held that the object of the provision of Section 13-B of the Act of 1955 is to enable the parties to dissolve a marriage by consent and the object of the cooling off period of 6 months was to safeguard against a hurried decision, if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage and agony of the parties where there was no chance of reconciliation. The Supreme Court thereafter concluded that such object can be allowed without waiting for the six months period having elapsed when the parties are already separated even before first motion itself.
7. In the case at hand, the motion itself was presented before this Court on 09.07.2015. Thus more than one year has elapsed from the first motion being presented before this Court.
8. Both the parties are present before the Court to press the motion for seeking divorce by mutual consent. In course of hearing respondent/husband would desire that their daughter- Ku. Aditi Sahu, presently aged about 7 years is in the custody of the appellant/wife, therefore, he may be allowed to visit his daughter atleast on festivals.
9. A prayer for custody or seeking visitation rights is ordinarily allowed while considering the prayer for custody of minor under the Guardians & Wards Act, 1890. However, to facilitate the divorce by mutual consent and to see that for some other trivial reason, the motion itself may not get frustrated,

for which the parties have otherwise agreed, while allowing the parties to sever their ties, we further direct the appellant to allow the respondent/husband to visit his daughter- Kumari Aditi Sahu on important festivals. If the respondent/husband is desirous of having custody of the daughter or to increase the frequency of his visitation rights, he would be at liberty to move before the appropriate Court.

10. Accordingly, IA No. 1, the application for divorce by mutual consent is allowed and the marriage between the parties solemnized on 07.05.2006 is dissolved by a decree of divorce by mutual consent with a further direction to the appellant to allow the respondent to visit his daughter- Kumari Aditi Sahu on important festivals. The parties shall bear their own costs.

11. A decree be drawn up accordingly.

Certified Copy, as per rules.

Sd/-
JUDGE

(Prashant Kumar Mishra)

Sd/-
JUDGE

(Arvind Singh Chandel)