

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No. 353 of 2018**

Smt. Pooja Purohit W/o Sumer Purohit Aged About 26 Years
 D/o Sanjay Sharma, Aged About 26 Years, R/o Near Raipur
 Convent School Sector , Shivanand Nagar Khamtarai, Raipur
 Tahsil & District Raipur Chhattisgarh. --- **Petitioner**

Versus

Sumer Purohit S/o Madanlal Purohit Aged About 33 Years R/o
 Behind Gurudwara, Station Road, Lodhipara, Raipur Tahsil &
 District Raipur Chhattisgarh. --- **Respondent**

For the Petitioner	:	Mr. Saurabh Sharma, Advocate.
For the Respondent	:	Mr. Neeraj Choubey, Advocate

HON'BLE SHRI JUSTICE GOUTAM BHADURI**C.A.V. JUDGMENT / ORDER****(Reserved on 23.04.2018)****(Pronounced on 09.05.2018)**

1. The present petition is against the order dated 02.04.2018 passed by the Principal Judge, Family Court, Raipur in Civil Suit No.113/2018 (*Sumer Purohit Vs. Smt. Pooja Purohit*) whereby the application jointly preferred by both the parties for reduction/relaxation of cooling-off period of six months as provided u/s 13-B(2) of Hindu Marriage Act has been dismissed.
2. Briefly stated facts of the case are that defendant wife Pooja Purohit was married to plaintiff Sumer Purohit on 01.02.2017. it is the case of the parties that after the marriage, they could not go long so as to continue with the marital relationship and they started living separately since 04.02.2017. Thereafter, on 05.02.2018 both the parties i.e.,

husband and wife had jointly filed a petition u/s 13-B of the Hindu Marriage Act seeking divorce by mutual consent. After filing of the petition on 06.02.2018, the learned court below had given the next date of hearing as 26.3.2018 for mediation and counseling. The efforts by mediation and counseling had failed and eventually the next date of hearing was given on 07.08.2018. In the meanwhile, an application has been jointly filed by the husband and wife on 02.04.2018 to reduce and relax the cooling-off period of six months.

3. The learned court below has dismissed the said application on the ground that since the parties have stated that they want to remarry, as such it was felt that the petition to relax the cooling-off period of six months was filed with an ulterior motive and in collusion with the parties.
4. Learned counsel for the petitioner as also learned counsel for the respondent both have submitted that both the parties are living separately since 04.02.2017 i.e., just after 3 days of the marriage and the efforts of conciliation proceedings have also failed and as such the marriage between the parties has irretrievably broken down and there is no chance of reunion. They placed reliance in a case law reported in ***(2017) 8 SCC 746 – Amardeep Singh Vs. Harveen Kaur*** and submitted that under the circumstances, the learned court below should have taken note of the fact that both the parties i.e., husband and wife have jointly requested to relax the cooling-off period of six months and accordingly the application for relaxation of cooling of period of six months ought to have been allowed.

5. Perused the documents filed with the petition. The record contains the application u/s 13-B of the Hindu Marriage Act, 1955. It is been stated that both the parties cannot go along and after marriage they have only stayed for 2-3 days together and due to certain difference of opinion, the relation interse between the parties i.e., husband and wife is not cordial. The petition further purports that all the *Stree Dhan* settlement has been arrived between the parties and both of them do not want to continue with their relations. The record would further show that during the pendency of the petition, an application was filed to waive the cooling-off period of six months as contemplated u/s 13(B) of the Hindu Marriage Act since both the parties i.e., husband and wife are well educated and could not live with each other, consequently the prayer to waive such period was made.
6. The order sheet would show that the application for mutual divorce was filed on 05.02.2018, therefore, the cooling off period of six months as stated in section 13-B would end on 04.08.2018. The application was filed for waiver of cooling-off period of six months on 02.04.2018. In this context, the text of section 13-B of Hindu Marriage Act would be relevant here and quoted below:

“13-B. Divorce by mutual consent.-- (1)

Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually

agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the period is not withdrawn in the meantime, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

7. The Supreme Court in a case law reported in ***(2017) 7 SCC page 746 – Amardeep Singh Vs. Harveen Kaur*** has held that in the year 1976, the concept of divorce by mutual consent was introduced and however, section 13-B(2) contains a bar to divorce being granted before six months of time elapsing after filing of the divorce petition by mutual consent. The said period was laid down to enable the parties to have a rethink so that the court grant divorce by mutual consent only if there is no chance for reconciliation. The Supreme Court has further laid down the following principles at para 19 :

“19. 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 13-B(2), it can do so after considering the following:

(i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(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 32-A 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.”

8. Applying the aforesaid principles to the present case, the facts would suggest that immediately after the marriage took place on 01.02.2017, both the parties i.e., the husband and wife have jointly applied for divorce by stating that they are living separately since 04.02.2017 and the application for mutual divorce was filed on 05.02.2018. The order sheets also records the fact that the conciliation proceeding to reunite the parties has failed on 26.03.2018 and after filing of application on 05.02.2018, another application to waive the period of six months was filed on 02.04.2018 wherein the parties had stated that they could not go along with each other and after the divorce they want to remarry. Therefore, by all necessary implications, it goes to show that even after rethinking, the parties have come to firm opinion and arrived at a settlement that they cannot stay together and want the divorce. As a natural consequence it can be said to be a fair submission on the part of both the petitioner and respondent that they want to remarry after decree of divorce. Having stated so it further fortifies the intention to get separated and the waiting period will only prolong their agony.

9. Under the circumstances the order dated 02.04.2018 passed by the Family Court Raipur is set aside. The application jointly filed by the petitioner and the respondent to waive the colling-off period of six months is allowed. The parties shall appear before the family court on **18.05.2018** to record their statements before the Court below and thereafter the Court below shall adjudicate the same in accordance with law.
10. In the result, the writ petition is allowed.

Sd/-

GOUTAM BHADURI
JUDGE