

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 181 of 2017

- Anita Pandey W/o Ajay Sharma, Aged About 32 Years R/o East Nepal Gate Churcha Colliery, Police Station Churcha, Post Churcha Colliery, Tahsil Baikunthpur, Distt. Korea Chhattisgarh Presently R/o A 78 Sagar Homes, Phase - 1, Nature City Uslapur, Bilaspur Chhattisgarh

---- Appellant

Versus

- Ajay Sharma S/o Dhanush Dhari Dubey, Aged About 34 Years R/o Krishnapur, P. S. And Tahsil And Distt. Surajpur Chhattisgarh Presently Residing At Qtr. No. 183/3 Railway Colony, Shahdol, Distt. Shahdol, Madhya Pradesh

---- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For Respondent	:	Shri Ashok Kumar Shukla, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Rajani Dubey

Order On Board

24/07/2018

The appellant and respondent, both are present in the Court.

The appellant/plaintiff moved an application for grant of decree of divorce against the respondent / husband. A decree was sought on the grounds that after the marriage, cohabitation never took place between the parties and the defendant stated that he is impotent and has contacted marriage on the pressure exerted by his family members and further that since the date of marriage, till the date of filing of the suit, they never established any physical relation. It was also pleaded that after the marriage, defendant and his family subjected the appellant to cruelty despite lot of gifts given at the time of marriage and thereafter, demand and torture increased and she was also subjected to assault and was also turned out of the matrimonial house and at times, wrongfully confined. Learned Trial Court found that none of the grounds are made out, therefore, suit was dismissed.

2. During the pendency of this appeal, now an application under Section 13 B of

the Hindu Marriage Act, 1955 (for short 'the Act of 1955') has been moved by both the parties seeking decree of divorce by mutual consent. After this application was filed, this Court directed the parties to appear. Learned counsel for the parties and the parties are also present in the Court.

3. Relying upon the Supreme Court decision in the case of **Amardeep Singh v. Harveen Kaur, 2017 (8) SCC 746**, it is submitted by learned counsel for the parties that after the judgment of the Supreme Court, it is no longer *res integra* that the provision with regard to cooling off period is not mandatory but directory and in appropriate cases, the Court can exercise its discretion to waive the period and grant decree of divorce by mutual consent. In the decision of the Supreme Court referred to above, it was held as below -

“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.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the Court concerned.”

However, considerations which are required to be kept in mind while arriving at the satisfaction that the marriage is irretrievably broken and the parties, in the given circumstances, are entitled to decree of divorce, are mentioned in para 14 of the

judgment of the Supreme Court which are reproduced as below-

“14. xxxxxxxx

- (i) How long parties have been married ?
- (ii) How long litigation is pending ?
- (iii) How long they have been staying apart?
- (iv) Are there any other proceedings between the parties ?
- (v) Have the parties attended mediation / conciliation ?
- (vi) Have the parties arrived at genuine settlement which takes care of alimony, custody of child or any other pending issues between the parties ?”

4. In view of above, we think it proper that the matter should be remitted to the Family Court. The Family Court shall record statement of both the parties which are considered to be relevant as mentioned in para 14 of the judgment of the Supreme Court referred to above and thereafter, it can proceed to pass decree waiving the cooling period as stipulated in Section 13 -B of the Act of 1955.

5. The matter is accordingly remitted to the Trial Court by setting aside the order of the Trial Court. The parties shall appear before the Trial Court personally and / or through counsel before the Trial Court on 30/08/2018. The appeal is accordingly disposed off.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge