

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.176 of 2019**

Smt.Astha Sharma W/o Deepak Sharma, aged about 30 years, resident of Abhyuday Bungalow, Mitra Vihar Colony, P.S. Tarbahar, District-Bilaspur (CG)

---- Petitioner**Versus**

Deepak Sharma, S/o Shri Satish Chandra Sharma, aged about 33 years, resident of house No.B 1105/6, Phase No.03, Bhumi Park, Jan Kalyan Nagar, Malwani No.01, Malad West, Mumbai (M.H.)

---- Respondent

For Petitioner	:	Mr.Prakash Tiwari, Advocate
For Respondent	:	Mrs.Fouzia Mirza, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****25/3/2019**

1. Learned counsel for the petitioner would submit that the petitioner and the respondent both have preferred an application under Section 13B (2) of the Hindu Marriage Act, 1955 (hereinafter called "the Act of 1955") for grant of divorce by mutual consent in which learned Family Court has adjourned the matter to be considered after expiry of six months, which is unsustainable and bad in law. He would further submit that in view of decision of the Supreme Court rendered in the matter of Amardeep Singh v. Harveen Kaur¹, the Family Court is not required to wait for expiry of six months and application for divorce by mutual consent can be considered before expiry of the period of six months.

2. Learned counsel for the respondent would support the submission of

¹ (2017) 8 SCC 746

learned counsel for the petitioner.

3. I have heard learned counsel for the parties and perused the records with utmost circumspection.
4. The Supreme Court in the matter of Amardeep Singh (supra) has held that in the year 1976, the concept of divorce by mutual consent was introduced and however, Section 13-B(2) of the Act of 1955 contains a bar to divorce being granted before six months of time elapsing after filing of 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.”

The principle of law laid down by the Supreme Court in Amardeep Singh (supra) has been followed by this Court in WP227 No.353 of 2018 (Smt. Pooja Purohit v. Sumer Purohit), decided on 9.5.2018.

5. In view of above, the impugned order dated 2.1.2019 is set aside.

The Principal Judge, Family Court, Bilaspur is directed to consider the application filed by the parties under Section 13B (2) of the Act of 1955 in the light of principle of law laid down by the Supreme Court in Amardeep Singh (supra) within a period of ten days from the date of appearance of the parties before the Family Court. Parties are directed to appear before the Family Court, Bilaspur on **10th April, 2019**.

6. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-