

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No.162 of 2019**

- Paresh Tank S/o Late Pradeep Tank Aged About 28 Years R/o B 501, Near Richmand Grand Torent Tower, Makbara Road, Prahlad Nagar, Ahamdabad (Gujarat)., District : Ahmadabad, Gujarat

---- Appellant**Versus**

- Smt. Vinita Tank W/o Shri Paresh Tank Aged About 27 Years R/o C/o Shri Kumarkant Tank, House No. 35/1, 8-B Road, Near Hanuman Mandir, Maitri Nagar, Risali, Pragti Nagar, Durg, Civic Center, Bhilai, Tahsil And District Durg Chhattisgarh., District : Durg, Chhattisgarh

---- Respondent

For appellant : Shri Vaibhav Shukla, Advocate
 For Respondent: Shri Praveen Shrivastava, Advocate

D.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava &
Hon'ble Smt. Justice Vimla Singh Kapoor
Order On Board

09/07/2019

Heard.

1. With the consent of learned counsel for the parties, this appeal is being finally disposed off.
2. Grievance of the appellant in this appeal is that the learned Family Court has rejected the application under Section 13(B) of the Hindu Marriage Act holding that the case having not been transferred for decision, the 3rd Additional Principal Judge, Family Court, Durg had no jurisdiction.
3. After hearing learned counsel for the parties, we find that during the pendency of application for grant of divorce on the grounds enumerated under Section 13(1-A) & 13(3) of the Hindu Marriage Act, the parties claiming to have entered into the settlement, moved an application for grant of decree of divorce by mutual consent as provided under Section 13(1)(B) of the Hindu Marriage

Act. The learned 3rd Additional Principal Judge, Family Court, instead of passing an order rejecting application, ought to have left the matter to be placed before the Principal Judge, Family Court. Even according to the learned 3rd Additional Principal Judge, Family Court, the case was not made over to it, as such, it has no jurisdiction to decide the application.

4. In view of above, Order dated 17-05-2019 passed by the learned 3rd Additional Principal Judge, Family Court, Durg is set aside. The application for grant of decree by mutual consent under Section 13(B) of the Hindu Marriage Act be placed before the learned Principal Judge, Family Court, Durg, for appropriate consideration and expeditious disposal in accordance with law.

5. Before parting with the case, as the Supreme Court decision in the case of ***Amardeep Singh vs. Harveen Kaur, (2017) 8 SCC 746***, has been brought to our notice, it will be open for the parties to seek waiver of cooling period.

6. Accordingly, this appeal is allowed.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Vimla Singh Kapoor)
Judge