

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
FAM No. 211 of 2019

- Prince Malhotra S/o Late R.K. Malhotra Aged About 28 Years R/o Alka Avenue, Uslapur, Tahsil and District Bilaspur Chhattisgarh.

---- Appellant

Versus

- Smt. Maulshri Shrivastava (Malhotra) W/o Prince Malhotra Aged About 25 Years D/o Late Saurabh Chandra Shrivastava, R/o K.M. Shrivastava, HIG- 12, Arya Colony, Tifra, District Bilaspur Chhattisgarh.

---- Respondent

For Appellant

: Shri Sanjay Kumar, Advocate

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order on Board

Per Manindra Mohan Shrivastava, J.

22/07/2019

Heard.

2. This appeal is directed against the order dated 28.06.2019 passed by the learned Family Court.

3. Learned counsel for the appellant would argue that even though both the parties have applied for grant of divorce by mutual consent and also jointly applied for waiving off cooling period of six months in view of Supreme Court decision in the case of **Amardeep Singh Vs. Harveen Kaur, 2017 (8) SCC 746**, the learned Court below did not consider the application and has mechanically listed the case for consideration after six months.

4. After going to the impugned order, we are of the view that the learned Family Court has committed illegality in not considering application filed by both the parties for waiving off cooling period. In

the case of Amardeep Singh Vs. Harveen Kaur, their Lordships in the supreme Court have clearly laid down that the provision for cooling period as provided in Section 13 (B) of Hindu Marriage Act, is not mandatory and in appropriate cases, it is open for the Court to even waive off cooling period. This, therefore, required the learned Family Court to consider the application for waiving off the cooling period upon due application of mind and in the light of the law laid down by the Supreme Court in the case of Amardeep Singh Vs. Harveen Kaur. For that reason stated above, we are inclined to set aside the order and we accordingly do so.

5. Impugned order is set aside and the Family court is directed to examine the application filed by both the parties for waiving off cooling period upon due consideration of the verdict of the Supreme Court in Amardeep Singh Vs. Harveen Kaur, as early as possible.

6. Accordingly, the appeal is allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge