

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 262 of 2019**

- Smt. Bharati Tandon W/o Shri Lakhan Lal Tandon Aged About 34 Years R/o Village Mohatara, Police Station And Tahsil Masturi, Post Office Devgaon, District Bilaspur Chhattisgarh

---- Appellant**Versus**

- Lakhan Lal Tandon S/o Shri Santram Tandon Aged About 43 Years R/o Risda (Gudipara), Post Office Risda, Police Station And Tahsil Masturi District Bilaspur Chhattisgarh

---- Respondent

For Appellant : Shri Vijay K. Deshmukh, Advocate

For Respondent : Shri Ravi Mehar, Advocate

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****16/09/2019**

With the consent of learned counsel for the parties and presence of the parties, this appeal is heard finally.

2. The appellant has filed this appeal aggrieved by order dated 17/06/2019 passed by the Family Court whereby, on application for grant of divorce by mutual consent filed both the parties under Section 13 (B) of the Hindu Marriage Act, learned Court below has adjourned the case for being listed for consideration after six months.

3. The short and pointed submission of learned counsel for the appellant is that the learned Court below has not taken into consideration, the law laid down by the Supreme Court in the case of **Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746** that in appropriate cases, cooling off period of six months could be waived. He submits that in the present case, the Court below ought to have waived the cooling period, taking into consideration that the parties are living separate since 2012.

4. We find that no such prayer was made before the Court below and the impugned order does not show that any prayer was made to waive the cooling period by bringing to the notice of the Court below the aforesaid judicial pronouncement of the Supreme Court.

5. If the parties are willing to seek waiver of cooling period, appropriate supplementary pleadings can be made by both the parties to waiver in terms of order passed by the Supreme Court in the case of **Amardeep** (supra). On such application being made, learned Trial Court shall apply its mind on relevant considerations which is being enumerated in para 14 of the aforesaid decision and pass appropriate order, if necessary, for waiver of cooling period so that in case, any case is made out, decree of divorce by mutual consent could be passed at the earliest.

The application for waiver of cooling period shall be decided by learned Trial Court within 30 days from the date of submission of appropriate application by both the parties.

6. With the aforesaid observations, this appeal is finally disposed off.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge