

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 4 of 2019**

- Suman Ratre W/o Pradeep Kumar Khare Aged About 38 Years R/o Village Pamgarh, Police Station And Tahsil Pamgarh, District Janjgir-Champa, Chhattisgarh, Present Address Village Pauni, Police Station And Tahsil Bilaigarh, District Baloda-Bazar-Bhatapara, Chhattisgarh

---- Appellant**Versus**

- Pradeep Kumar Khare S/o Shri Shiv Dayal Khare Aged About 38 Years R/o Village Pamgarh, Police Station And Tahsil Pamgarh, District Janjgir-Champa, Chhattisgarh

--- Respondent

For Appellant	:	Mr. Ravindra Sharma, Advocate.
For Respondent	:	Mr. Vaibhav A. Goverdhan, Advocate.

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

1. With the consent of the parties, the matter is being disposed off finally at motion stage.
2. This appeal is directed against order dated 13.08.2019 by which, learned Family Court has rejected the prayer for waiver of cooling period of six months.
3. Learned counsel for the appellant would urge that earlier, when this Court had disposed off the appeal, it was clearly observed that parties prayed for waiver of cooling period of six months in view of Supreme Court decision in the case of **Amardeep Singh v. Harveen Kaur, 2017 (8) SCC 746** and that shall be given due weightage by the learned Family Court. Learned counsel for appellant submits that the learned Family Court rejected the prayer on technical grounds that no application has been made whereas the admitted circumstances of the case is that the parties are living separately since long

period.

4. Learned counsel for the respondent submits that the respondent is also inclined to go for divorce by mutual consent.
5. We find that the learned Court below rejected the prayer because no specific application specifying relevant facts has been placed before the learned Court below.
6. In view of the Supreme Court decision in the case of **Amardeep Singh** (supra), a prayer for waiver of cooling period has to be considered on the facts and circumstances of the given case and it is not a mechanical exercise of power, therefore, the parties are required to move appropriate application seeking waiver of cooling period by specifying relevant facts for such prayer. The parties are required to move such application to prove legal requirement which has not been done. Therefore, we are inclined to dispose off this appeal, however, liberty is given to the appellant to move appropriate application before the Court below. No sooner the application is moved, learned Family Court shall take appropriate decision. We also make it clear that the Court below, while taking such decision, shall keep in view the decision of the Supreme Court and shall give due weightage that both the parties are inclined to seek divorce by mutual consent and that they are living separately since long time.
7. We also make it clear that the application for waiving the cooling period shall be decided within a period of 30 days from the date of submission of such application and in the event, prayer is allowed, final order may also be passed by the learned Family Court preponing the date of hearing.
8. With the aforesaid observations, this appeal is finally disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge