

HIGH COURT OF CHHATTISGARH, BILASPURFA(MAT) No. 39 of 2019

- Ravi Kumar Tandan S/o Shri Shobha Ram Tandan Aged About 26 Years R/o Mudapar Basti, Behind Ravi Sweets Korba, Police Outpost- Manikpur, Tahsil and District- Korba, Chhattisgarh.

---- Appellant

**Versus**

- Smt. Isha Arya W/o Ravi Kumar Tandan Aged About 23 Years R/o E.W.S. 98, M.P. Nagar Korba, Police Outpost- Rampur, Tahsil And District- Korba Chhattisgarh.

--- Respondent

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For Appellant : Shri Devesh G. Kela, Advocate

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**D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava****Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava****21/10/2019**

Heard.

2. The learned Family Court vide impugned order dated 04.09.2019 rejected the application at the first instant even at the stage of registration holding that an application under Section 10 of the Hindu Marriage Act, claiming a decree of judicial separation could not be filed until after expiry of one year from the date of marriage. It is this order which is under challenge before this Court.

3. Learned counsel for the appellant submits that the learned Family Court has wrongly applied the precondition incorporated in Section 13 of the Hindu Marriage Act which relates to filing of petition seeking decree of divorce. According to him, divorce and judicial separation are different and cannot be treated as one and the same. According to him, judicial separation, does not by itself, result in

dissolution of marriage. Therefore, the precondition for filing application seeking decree of divorce could not be imported and incorporated in Section 10 of the Hindu Marriage Act.

4. We have heard learned counsel for the appellant.

5. The Learned Family Court has rejected the application for grant of decree of judicial separation at the threshold holding that until expiry of period of one year, no application for decree of judicial separation could be filed.

6. Statutory scheme in the matter of application for grant of decree of judicial separation and that for grant of decree of divorce are different and distinct under the Hindu Marriage Act. Judicial separation cannot be treated to be divorce and resultant dissolution of marriage between the parties. Even when judicial separation is granted, the marriage between the parties subsists. In fact, under sub-section 1 (A) of Section 13 of the Hindu Marriage Act, non cohabitation for a period of one year after passing of decree of judicial separation itself becomes a ground seeking decree of divorce.

7. Therefore, there is no warrant for reading precondition of expiry of one year, for filing application for decree of judicial separation. There is nothing in the said provision requiring that application for decree of judicial separation could not be filed until expiry of period of one year. Such a condition has been incorporated only under Section 13 of the Hindu Marriage Act, before an application for grant of decree of divorce could be filed.

8. The order of learned Court below therefore, appears to be contrary to the provision of Section 10 of the Hindu Marriage Act and cannot be sustained in law. Impugned order is therefore set aside.

The Family Court shall decide the application under Section 10 of the Hindu Marriage Act on its own merits, in accordance with law.

Sd/-

**(Manindra Mohan Shrivastava)**  
**Judge**

Sd/-

**(Vimla Singh Kapoor)**  
**Judge**

*Pawan*