

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.83 of 2020

- Smt. Neha Singh W/o Shri Sajan Raghvan Aged About 30 Years R/o Chanchal Bhawan, Beside Shivam Vatika, Mopka, Thana Sarkanda, Tehsil And District Bilaspur Chhattisgarh

---- *Petitioner*

Versus

- Sajan Raghvan S/o Shri A. Raghvan Aged About 34 Years R/o Sannidhan House, Pukode, Post Office- Pattiyam, Village- Pathayakunnu, District- Kannoor (Kerala)

---- *Respondent*

For Petitioner : Mr. Achyut Tiwari, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

28-01-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 10.01.2020 passed by the Principal Judge, Family Court, Bilaspur, District- Bilaspur, C.G.
2. Learned counsel for the petitioner submits that the petitioner and respondent both have jointly filed application under Section 13-B of Hindu Marriage Act, 1955, praying for decree of divorce on the basis of consent between them. Separate application was filed by the petitioner before the learned Principal Judge, Family Court, Bilaspur, C.G. praying for early disposal of the case and praying for grant of exemption of the waiting period of six months as it is required under Section 13-B of Hindu Marriage Act, 1955. It is further submitted that the learned trial Court rejected the application which is erroneous and against the principle laid down by the Hon'ble Supreme Court in the case of

Amardeep Singh Vs. Harveen Singh reported in **(2017) 8 Supreme Court Cases 746**, in which it is specifically held that the provisions of cooling-off period of six months as provided under Section 13-B of Hindu Marriage Act is not mandatory but it is directory in nature. Referring to this Judgment, the Coordinate Bench of this Court has decided the petition in W.P.(227) No.353 of 2018 on 09.05.2018 has passed order and allowed the petition of the parties by giving waiver of the cooling off period of six months under the provision. Therefore, it is prayed that petitioner be granted such relief.

3. In the matter of **Amardeep Singh** (Supra), the Hon'ble Supreme Court has held in paragraph 18 and 19:-

18.In determining the question whether provision is mandatory or directory, language alone is not always decisive. The Court has to have the regard to the context, the subject matter and the object of the provision. This principle, as formulated in Justice G.P. Singh's *Principles of Statutory Interpretation* (9th Edn., 2004), has been cited with approval in *Kailash v. Nanhku* as follows:

“34.....'The study of numerous cases on this topic does not lead to formulation of any universal rule except this that language alone most often is not decisive, and regard must be had to the context, subject-matter and object of the statutory provision in question, in determining whether the same is mandatory or directory. In an oftquoted passage Lord Campbell said: “No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be considered.’

“ ‘For ascertaining the real intention of the legislature’, points out Subbarao, J. ‘the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it the one way or the other; the impact of other provisions whereby the necessity of complying with the

provisions in question is avoided; the circumstances, namely, that the statute provides for a contingency of the non-compliance with the provisions; the fact that the non-compliance with the provisions is or is not visited by some penalty; the serious or the trivial consequences, that flow therefrom; and above all, whether the object of the legislation will be defeated or furthered'. If object of the enactment will be defeated by holding the same directory, it will be construed as mandatory, whereas if by holding it mandatory serious general inconvenience will be created to innocent persons without very much furthering the object of enactment, the same will be construed as directory."

19.Applying the above to the present situation, we are of the view that where the Court dealing with a matter is satisfied that a case is made out to waive the statutory period under [Section 13-B\(2\)](#), it can do so after considering the following :

- i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;
- ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3 CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;
- iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;
- iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the Court concerned.

As there is a clear direction in Paragraph 19 Clause I of the judgment mentioned above that the statutory period of six months specified in Section 13B(2) in addition to the statutory period of one year

under Section 13B(1) of Separation of Parties must already be over before the first motion itself. Therefore, when a case is listed for first motion, the statutory period as mentioned hereinabove must have expired, only in that case, the further requirement of putting off the hearing for further six months can be waived according to the directions given in this judgment.

4. In this particular case, the application under Section 13 B of the Act, 1955 has been filed on 10.01.2020 and on same day application was filed praying for exemption of the statutory period which do not cover the requirement as it is mentioned in judgment of **Amardeep Singh** (Supra). Hence, the learned Family Court has not committed any error in dismissing the application filed by the petitioner. Hence, this petition is dismissed and disposed off at motion stage.
5. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika