

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 97 of 2021

1. Rishi Chhabra, S/o Shri Ashok Chhabra, Aged About 31 Years,
R/o Punjabi Colony, Bilaspur (C.G.)
2. Anshika Chhabra, D/o Shri Rajesh Chhabra, Aged About 27
Years, R/o Narayan Niwas, Dayalband, District- Bilaspur (C.G.)

--- Petitioners

Versus

None

--- Respondent

For Petitioners : Mr. Anumeh Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22/02/2021

1. This writ petition has been brought under Article 227 of the Constitution of India, being aggrieved by the order dated 06.01.2021 passed by the learned Principal Judge, Family Court, Bilaspur (C.G.), dismissing the application filed by the petitioners praying to waive off the cooling period of six months as provided under Section 13B (2) of the Hindu Marriage Act, 1955 (for short "the Act, 1955").
2. It is submitted by learned counsel for the petitioners that the order passed is erroneous and ignoring the principle that has been laid down by the Supreme Court in **Amardeep Singh Vs. Harveen Kaur**, reported in **2017 (7) SCC 746**. Hence, the impugned order is liable to be set aside and the petitioners are entitled for grant of relief as prayed in their application.

3. This petition is not directed against any respondent. On perusing copy of the petition under Section 13B of the Act, 1955, the facts are revealed that the marriage of the petitioners took place on 18.02.2018 and after residing together for one year only, the petitioners have started living separately because they could not live together as they had differences on various issues. The petition under Section 13B of the Act, 1955 was filed on 23.09.2020 and by that time, the separate living of the petitioners had been one year and seven months. On the same date, the application was also filed praying waiving off the cooling period of six months as provided under Section 13B(2) of the Act, 1955, which has been dismissed by the impugned order.
4. Considered on the submissions. In the case of **Amardeep Singh (Supra)**, the Supreme Court has laid down in paragraph 19, which is as follows:-

“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 13B(2), it can do so after considering the following :

- (i) 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 is already over before the first motion itself;
- (ii) all efforts for mediation/conciliation including efforts in terms of Order XXXIIA 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.”

5. This ratio has been followed by the different High Courts. The High Court of Delhi in **J.S.V. Vs. V.P.G.**, reported in **2019 SCC OnLine Del 8391**, the High Court of Panjab and Haryana at Chandigarh in **Jyoti Vs. Baljinder Singh**, reported in **2019 SCC Online P&H 3268** and in **Sangeeta Singh Vs. Pardeep (CR No. 2199/2020 decided on 02.09.2020)** and the High Court of Bombay in **Kovelamudi Kanika Dhillon Vs. Kovelamudi Surya Prakash Rao**, reported in **2020 SCC OnLine Bom 2054**, have followed the same principle and granted relief to the parties.
6. On considering on the facts present in this case, I am of this view that the guidelines that has been laid down by the Supreme Court in **Amardeep Singh (Supra)** in clause (i) of paragraph 19, it is clearly met with, as the separate living of the petitioners had been more than one year and it was after completion of one year and further period of seven months, the petition was filed, praying for grant of divorce on mutual consent. Hence, the requirement that has to be made under Section 13B (1) & 13B (2) of the Act, 1955, both had been fulfilled.
7. As per the submissions and as per the pleading in the petition, it is revealed that efforts for conciliation and settlement between the parties, have failed, therefore, the requirement under clause (ii) in case of **Amardeep Singh (Supra)**, has also been fulfilled.

8. Both the petitioners are present before this Court and this Court has made query from both the petitioners and according to the reply given by them, it is found that the petitioners namely husband and wife, both are economically free and settled and they have no children, therefore, there is no requirement of consideration on the point of custody of child. Hence, there is no issue pending between the parties. Under these circumstances, the waiting period, which is required under Section 13B (2) of the Act, 1955, can be waived in such a case in accordance with the ratio that has been laid down and discussed hereinabove.
9. Hence, on considering the facts and circumstances, this writ petition is disposed of at motion stage. The impugned order is set aside and the application filed by the petitioners praying for waiver of the cooling period, as provided under Section 13B (2) of the Act, 1955, is hereby allowed.
10. The learned Family Court is directed to proceed with the case in accordance with law and dispose of the same at the earliest. The petitioners are directed to give appearance before the Family Court on **1st March, 2021** to participate in the further proceeding.
11. Accordingly, the instant writ petition stands disposed of at motions stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge