

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 132 of 2021

Vishal Idnani S/o Late Nandkishore Idnani Aged About 29 Years R/o House No. 9, Phase 3, Amrit Homes, Bag Mogaliya, Bhopal Madhya Pradesh.

---- Petitioner

Versus

Mahak Jadwani W/o Vishal Idnani Aged About 27 Years R/o Girdhari and Priyanka Baglo, Opposite Saint Poll Church, Near Netaji Subhashchandra Bosh Stadium, Raipur, District Raipur Chhattisgarh.

---- Respondent

For Petitioner : Shri Rahim Ubwani, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

8-3-2021

Heard.

1. This petition under Article 227 of the Constitution of India has been brought being aggrieved by the order dated 5.2.2021 passed by the Principal Judge, Family Court, Raipur in Civil Suit No. 29 of 2021, rejecting the application filed with a prayer to waive off the cooling period of six months under Section 13B(2) of the Hindu Marriage Act.
2. It is the submission of counsel for the petitioner that the impugned order is erroneous and against the law laid down by the Supreme Court in the case of **Amardeep Singh vs. Harveen Kaur**, reported in **(2017) 8 SCC 746**, therefore, the impugned order be quashed and the relief be granted to the petitioner.
3. Considered the submissions. The petitioner and the respondent both have filed an application under Section 13B of the Hindu Marriage Act,

1955 praying for decree of divorce on mutual consent. The relevant dates are firstly 18.1.2019, when the petitioner and the respondent got married. After arising of dispute between them, the petitioner and the respondent both are living separately since October, 2019; the application for mutual divorce has been filed on 7.1.2021.

4. The direction of the Apex Court in the case of **Amardeep Singh vs. Harveen Kaur** (supra) in clause 1 of paragraph 18 is as follows:

‘18. 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;’

There is no need to mention about the other directions of the Apex Court. The calculation in this case has to be made in accordance with the direction (i) as mentioned herein-above. The parties are living separately since October, 2019, therefore, one year of separation required under Section 13B(1) of the Hindu Marriage Act has completed on same day in October, 2020 and it was just after passing of two months, the petition for divorce has been filed on 7.1.2021 i.e. before six months from the date the year of separation was completed. Therefore, the requisite period prescribed under Section 13B(2) of the Act, 1955 was not over on the date the petition was filed and the application was moved for waiving off the cooling period, hence, I do not find any error in the impugned order passed by the learned Family Court. Therefore, this petition is disposed off at motion stage. The parties are at liberty to

file a repeat application after completion of period of six months from the date one year of their living separately is completed.

5. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi