

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 165 of 2021

1. Raju Kumar, S/o Shri Mukhlal, Aged About 32 Years, R/o A-32, Shivam City, Lingiyadih, District- Bilaspur (C.G.)
2. Priyanka Kumar (Gupta), D/o Binod, W/o Raju Kumar, Aged About 23 Years, R/o Rajkishor Nagar, Sarkanda, Bilaspur, District- Bilaspur (C.G.)

--- Petitioners

For Petitioners : Mr. Rajnish Singh Baghel, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

15/03/2021

1. This writ petition has been brought under Article 227 of the Constitution of India, seeking indulgence of this Court to quash the order dated 08.02.2021 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 both the petitioners, that they had jointly filed application under Section 13 (1B) of the Act, 1955, praying for decree of divorce on mutual consent.
3. It is further submitted that the marriage of petitioner No. 1 with petitioner No. 2 was solemnized on 17.02.2016. Because of differences between them, they started living separately from 10.01.2018. It was almost after two years, application under Section 13 (1B) of the Act, 1955 was filed on 28.01.2021. The

learned Family Court directed for counseling of the parties, which has failed, regarding which, there is mention in the order-sheet of the case on 28.01.2021. The learned Family Court has then posted the case after six months for the reasons that Section 13B(2) of the Act, 1955 provides for such cooling period.

4. It is further submitted that the petitioners then filed an application for waiving off the colling period, which has been dismissed by the impugned order. The learned Family Court has passed the impugned order erroneously 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.
5. There is no opposite party in this case.
6. Considered on the submissions. In the case of **Amardeep Singh (Supra)**, the Supreme Court has issued guidelines according to which, in specific cases, the cooling period as provided under Section 13B(2) of the Act, 1955, can be waived. The guidelines mentioned in paragraph 19 of **Amardeep Singh (Supra)**, 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.”

7. On the basis of these guidelines, the facts present in this case discloses that the petitioners have resided more than one year separately, therefore, requirement under Section 13B(1) of the Act, 1955, has completed. Thereafter, the petition under Section 13 (1B) of the Act, 1955 has been filed on 28.01.2021, therefore, further requirement of cooling period of six months under Section 13B(2) of the Act, 1955, has also been completed. Further, counseling procedure is also over, which has failed. Hence, under these circumstances, looking to the guidelines as laid down by the Supreme Court in **Amardeep Singh (Supra)**, it was a fit case, in which, the petitioners should have been benefited with the relief as they had prayed for.
8. 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 off the cooling period, as provided under Section 13B (2) of the Act, 1955, is hereby allowed.

9. 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 their appearance before the Family Court on **25th March, 2021** to participate in the further proceeding.
10. Accordingly, the instant writ petition stands disposed of at motions stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge