

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WP227 No.321 of 2021

Dr. Nikhil Motiramani **Versus** Dr. Geeta Ferwani/Motiramani

WP227 No.322 of 2021

16/07/2021	Mr. Rajat Agrawal, Advocates for petitioner. Heard on application praying for exemption from filing certified copy of Annexure-P1. As submitted that the original certified copy of the impugned order has been filed in CR No.20/2021, which has been withdrawn with liberty to file appropriate petition, therefore, exemption be granted. After due consideration, the application is allowed. Heard on admission. This petition is being disposed of by a separate order. Sd/- (Rajendra Chandra Singh Samant) Judge
Nisha	

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WP227 No.322 of 2021

Geeta Ferwani/Motiramani **Versus** Dr. Nikhil Motiramani

16/07/2021	Mr. Harshwardhan Parghaniha, Advocate for petitioner. Heard on application praying for exemption from filing certified copy of Annexure-P1. As submitted that the original certified copy of the impugned order has been filed in CR No.19/2021, which has been withdrawn with liberty to file appropriate petition, therefore, exemption be granted. After due consideration, the application is allowed. Heard on admission. This petition is being disposed of by a separate order. Sd/- (Rajendra Chandra Singh Samant) Judge
Nisha	

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 321 of 2021

- Dr. Nikhil Motiramani, S/o Dr. N. K. Motiramani, Aged About 38 Years
R/o - R-42, Sector 1 Extension, Avanti Vihar, Telibandha, Raipur
Chhattisgarh. Mobile No. - 9971154282, District : Raipur, Chhattisgarh

---- Petitioner

Versus

- Dr. Geeta Ferwani/Motiramani, W/o Dr. Nikhil Motiramani, D/o Shri
Nandlal Ferwani, Aged About 35 Years Presently Residing At - Plot
Number 141 / A, Sindhi Colony, Jalna Road, Aurangabad, Maharashtra -
431001, Mobile No. - 9890853436, District : Aurangabad, Maharashtra

---- Respondent

WP227 No. 322 of 2021

- Geeta Ferwani/motiramani, W/o Dr. Nikhil Motiramani, Aged About 35
Years, D/o Shri Nandlal Ferwani Presently Residing At Plot No. 141/a,
Sindhi Colony, Jalna Road, Aurangabad, Maharashtra 431001 Mobile
No. 9890853436.

---- Petitioner

Versus

- Dr. Nikhil Motiramani, S/o Dr. N. K. Motiramani, Aged About 38 Years,
R/o R-42, Sector-1 Extension, Avanti Vihar, Telibandha Raipur
Chhattisgarh Mobile No. 9971154282.

---- Respondent

For Applicant	:	Mr. Rajat Agrawal, Advocate in WP227 No.321.2021.
	:	Mr. Harshwardhan Parghaniha, Advocate in WP227 No.322.2021.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

16/07/2021

1. As the petitioners in both the cases have filed these petitions being aggrieved by the same impugned order passed in Civil Case No.391/2021 pending before the Family Court, Raipur, therefore, they are being disposed off by this common order.
2. Petitioner in WP227 No.321/2021 is husband and respondent in this case who is petitioner in WP227 No.322/2021 is wife. Both of them have filed a petition under Section 13B of Hindu Marriage Act, 1955(for short 'the Act, 1955') praying for decree of divorce on mutual consent. An application was filed by both of them praying to waive the cooling period provided under Section 13B(2) of the Act, 1955. The learned trial Court has dismissed this application by the impugned order.
3. It is submitted by the learned counsel for the petitioners, that the marriage of the petitioners in both the cases took place on 6.11.2016. Because of the differences between them, they started residing separate from 18.6.2018. Subsequent to which, the petition under Section 13B of the Act, 1955, has been filed on 16.6.2021, hence, it was a fit case in which the prayer made by the petitioners in both the cases should have been allowed in view of the ratio laid down by the Supreme Court in the case of ***Amardeep Singh v. Harveen Kaur, reported in (2017) 8 SCC 746***, hence, the order impugned is erroneous illegal and arbitrary. The impugned order be set aside and relief be granted to the petitioner in both the cases.
4. I have heard both the parties and perused the documents on record.
5. The provision under Section 13B(1)&(2) is as follows:-

“**13B. Divorce by mutual consent.** (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976)*, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been

solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]”

6. The Supreme Court held in the case of Amardeep Singh (supra) is as under:-

“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;

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. According to the facts present, after the solemnization of marriage, the parties are residing separately since more than one year. Subsequent to which, the petition under Section 13B of the Act, 1955 has been filed. In the directions given in the case of Amardeep Singh, the Family Court has to ensure to that all the efforts for mediation or conciliation etc. have been made and failed before passing any order to waive the cooling period.
8. In this case, the petition was filed on 16.6.2021 and on the same date the application for getting the cooling period waived has been filed which has been dismissed mentioning, that the Court has not made any efforts for mediation or conciliation to settle the dispute between the parties, hence, for these reasons, I am of this view that the requirement as present under the direction of Supreme Court in Amardeep case(supra) was not fulfilled. It is only after the completion of such process an application can be filed and then considered, hence, I am of this view that the learned Family Court has not committed any error in passing the impugned order.

9. Accordingly, both the petitions are dismissed at motion stage. The learned Family Court is directed to take-up the matter of mediation or conciliation between the parties as early as possible. Subsequent to which, the petitioners in both the cases shall be at liberty to file a fresh application again for waiving off the cooling period.
10. With these observations, both the petitions are disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha