

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURFA(MAT) No. 34 of 2021

- Smt. Vimla Kushwaha D/o Ram Swaroop Prasad Kushwaha Aged About 30 Years Caste Kushwaha, R/o Village Sirsi, Police Station And Tahsil Bhaiyathan District Surajpur Chhattisgarh

---- Appellant

Versus

- Ravindra Singh Suryawanshi S/o Shri Mugeshwar Prasad Suryawanshi Aged About 37 Years Caste Kushwaha, R/o Village Champak Nagar, Police Station And Tahsil And District Surajpur Chhattisgarh

---- Respondents

For Appellant : Shri V.K. Pandey, Advocate

For Respondent : Shri Gyan Prakash Shukla,
Advocate

Hon'ble Shri Justice Goutam BhaduriHon'ble Smt. Justice Rajani DubeyJudgment on BoardPer Goutam Bhaduri, J.07/12/2021

Heard.

1. Learned counsel for the appellant would submit that judgment passed in case of Amardeep Singh Vs. Harveen Kaur reported in (2017) 8 SCC 746 lays down certain conditions to be seen before the decree of divorce is granted and the appellant may be given liberty to go before the trial Court to file appropriate application.

2. Learned counsel for the respondent would submit that the

appeal would not lie, in view of the bar created under Section 19 (2) of Family Courts Act, 1984 (for short 'Act of 1984') along with section 96 (3) of Code of Civil Procedure, 1908 (for short 'Act of 1908').

3. Perused the judgment and decree and the records of the Court below.

4. Perusal of records of the Court below would show that application for mutual divorce was filed on 18.11.2020 and on 15.12.2020 an application for urgent hearing was filed to dilute the cooling-off period which bears the signature of both the parties i.e. the appellant and the respondent. Pursuant thereto on 15.12.2020, the learned Court below took up the case and initially after some time fixed the case for hearing and tried to advise for conciliation. After some time, when the parties appeared and expressed inability to reconcile and as such on 15.12.2020 at 12.30 P.M. evidence of both the parties were recorded and case was fixed for orders on the next date i.e. 16.12.2020. On 16.12.2020 the orders were passed and the cooling-off period of 6 months was waived and the decree of divorce was passed. Subsequently, this appeal has been filed.

5. Submission is made that various aspects which has been laid down to dilute the cooling-off period as per the law laid down Amardeep Singh (supra) has not been followed. For sake of brevity para 19 of the judgment is quoted herein under:-

"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 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. "

6. It has been submitted before this Court that in respect of the alimony, maintenance and custody of the children or any other pending issue between the parties have not been decided and had there been waiting time the parties would have thought over time and again to get divorce or not and would have settled the alimony, custody of children. The said submission of the appellant about the maintenance and other issues is a new fact which is brought before this Court. During the course of evidence these issues were never agitated and no whisper was made before the trial court of those facts. Therefore, if the appellant wants to get over the order of decree which is by consent, then in such case, she has to approach the learned trial court again to canvas the new facts.

7. Section 19 (2) of Act of 1984 categorically mandate that no appeal shall lie in decree or order passed by family Court with the consent of the parties. Likewise similar provisions is contend in section 96 (3) of CPC which postulates that no appeal shall lie against the decree passed by the Court with the consent of the parties. For the sake of brevity section 19 (2) of Act of 1984 is reproduced hereinunder:-....

19. Appeal :-

(1) XXX

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991].

8. Likewise Section 96 (3) of Act of 1908 is reproduced hereinunder:-

96. Appeal from original decree:-

(1)XXX

(2)XXX

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

9. In view of such statutory mandate, we are not inclined to go into the merits of this appeal. The appeal is not maintainable as such it is dismissed. The appellant if so aggrieved feels that certain new facts are required to be considered may approach the learned trial court again.

Sd/-

(Goutam Bhaduri)

Judge

Sd/-

(Rajani Dubey)

Judge