

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 4799 OF 2022

Sibasish Das

....

Petitioner

Mr. Bibekananda Nayak, Advocate

-versus-

Y. Srilekha Das and another

....

Opp. Parties

Mr. Gopal Prasad Jena, Advocate
(For Opp. Party No.1)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
03.03.2022

Order No.

1. 1. This matter is taken up through hybrid mode.
2. 2. This writ petition has been filed for a direction to the learned Judge, Family Court, Cuttack to dispose of C.P. No. 797 of 2021 filed under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act') by waiving the statutory period as provided under Section 13-B(2) of the Act.
3. 3. Mr. Gopal Prasad Jena, learned counsel enters appearance on behalf of Opposite Party No.1 by filing Vakalatnama in Court today on her behalf before issuance of notice, which is taken on record.
4. 4. Mr. Nayak, learned counsel for the Petitioner submits that the marriage between the Petitioner and Opposite Party No.1 was solemnized on 14th July, 2013 at Tarini Mandir, Biribati in the district of Cuttack as per Hindu Rites and Customs. Due to dissension arose between the parties, a petition under Section 13-B of the Act has been filed by both the parties on 25th November, 2021 before learned Judge, Family Court, Cuttack, which is registered as C.P. No. 797 of 2021. As the Opposite Party No.1 has to leave the

State for higher studies, both the parties have made a prayer to the learned Judge, Family Court, Cuttack for early disposal of the civil proceeding by waiving the statutory period as provided under Section 13-B(2) of the Act. That being not acceded, the Petitioner has filed this writ petition for the aforesaid relief.

5. Mr. Jena, learned counsel for the Opposite Party No.1 contended that the Opposite Party No. 1 has no objection, if the marriage is dissolved by a decree of divorce by waiving the statutory period as provided under Section 13-B(2) of the Act.

6. In support of their case, learned counsel for the parties relied upon a decision in the case of **Amardeep Singh –v- Harveen Kaur**, reported in AIR 2017 SC 4417, wherein the Hon’ble Supreme Court held that while considering the application for waiving the statutory period as provided under Section 13-B(2) of the Act, the Court has to consider the following:

- “(i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(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. In that view of the matter, learned counsel for both the parties pray for a direction to the learned Judge, Family Court, Cuttack to consider their application in terms of the ratio decided in the case of **Amardeep Singh** (supra).

8. Taking into consideration the submissions made by learned counsel for the parties, this Court is of the considered opinion that since the application has been filed under Section 13-B of the Act by both the parties and the Opposite Party No. 1 has a genuine cause to seek for waiving the statutory period as provided under Section 13-B(2) of the Act, their application should be considered at the earliest in terms of the ratio decided in the case of *Amardeep Singh* (supra).

9. Accordingly, this writ petition is disposed of with a direction that in the event the Petitioner and Opposite Party No.1 file a joint petition for waiving the statutory period as provided under Section 13-B(2) of the Act within a period of two weeks hence along with certified copy of this order, learned Judge, Family Court, Cuttack shall do well to consider the same in accordance with law by passing a reasoned order, as expeditiously as possible preferably within a period of eight weeks keeping in mind the ratio decided in the case of *Amardeep Singh* (supra) and giving opportunity of hearing to the parties concerned.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

bks/ms