

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 20160 OF 2022

Smt. Deepika Dash and another ***Petitioners***
Mr. Goutam Kumar Acharya,
Senior Advocate
being assisted by Mr.B. Das, Advocate
-versus-
Family Court, Bhubaneswar ***Opp. Party***

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
12.08.2022**

Order No.

01. 1. This matter is taken up through hybrid mode.
2. This writ petition has been filed by both the spouses assailing the order dated 4th August, 2022 (Annexure-1) passed by learned Judge, Family Court, Bhubaneswar in C.P. No.662 of 2022, whereby he refused to waive the cooling off period of six months as provided under Section 13-B(2) of the Hindu Marriage Act, 1955 (for short 'the Act'). They also pray for a direction to the learned Judge, Family Court, Bhubaneswar to dispose of application under Section 13(B) of the Act by the end of August, 2022 by waiving the cooling off period.
3. It is submitted by Mr. Acharya, learned Senior Advocate appearing for the Petitioners that marriage between the Petitioners was solemnized on 15th February, 2019. Both are highly qualified and are pursuing their career abroad. Due to marital discord, they dissolved their marriage by an agreement of divorce before the competent Court in USA. As the marriage was solemnized at Bhubaneswar as per Hindu Rites and Customs, they also filed an application before learned

Judge, Family Court, Bhubaneswar under Section 13(B) (1) of the Act for dissolution of marriage on consent. An application for waving the cooling off period was also filed. Section 13-B (2) of the Act requires that on the motion of both the parties made not earlier than six months after the date of the presentation of the petition under Section 13-B (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized 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. In the instant case, both the parties are staying apart for more than one year. They have also dissolved their marriage on mutual agreement before the competent Court in USA. Hence, they filed an application to waive the cooling period of six months and for passing a decree of divorce on mutual consent.

4. It is submitted by Mr. Acharya, learned Senior Advocate that parties have come to India for recording their dissolution of marriage on consent so that both the them can lead a life of their choice. They are leaving India in the first week of September, 2022. Thus, interest of justice will be best served, if the Court takes up the application under Section 13-B(1) of the Act by waiving the cooling off period. Learned Judge, Family Court, Bhubaneswar without appreciating the same, rejected the petition by refusing to waive the cooling off period. Hence, this writ petition has been filed.

5. Taking into consideration the submission made by learned counsel for the Petitioners and the averments made in the petition to the effect that parties are living apart for more than one year and that by mutual agreement, they have dissolved their marriage by the order of competent Court in USA, no fruitful purpose will be served by adhering to the cooling off period of six months to entertain the application under Section 13-B(1) of the Act. If further appears that parties will leave India during first week of September, 2022 and there is no likelihood of their coming back within eighteen months from the date of presentation of the petition under Section 13-B (1) of the Act to pursue the said petition. Cooling off period is meant to provide an opportunity to the parties to the marriage to take a decision to lead a conjugal life. In the instant case, the same appears to be an impossibility, more particularly when the Petitioners have dissolved their marriage by a mutual agreement before a competent Court in USA.

6. In the facts and circumstances of the case, this Court is of the considered opinion that interest of justice will be best served, if learned Judge, Family Court, Bhubaneswar considers the application under Section 13-B(1) of the Act by waiving the cooling off period of six months.

7. Accordingly, the order dated 4th August, 2022 (Annexure-1) passed by learned Judge, Family Court, Bhubaneswar is set aside and this writ petition is disposed of with a direction that in the event, the Petitioners appear before learned Judge, Family Court, Bhubaneswar and moves the application filed under Section 13-B(1) of the Act on 17th

August, 2022 along with certified copy of this order, he shall do well to take up and dispose of the same as expeditiously as possible preferably before 31st August, 2022 without insisting upon the requirements of Section 13-B(2) of the Act.

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

(K.R. Mohapatra)
Judge

ms

