

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 22824 OF 2022

Siddhartha Swain

....

Petitioner

Mr. Saswat Kumar Acharya, Advocate

-versus-

Monalisa Sahani

....

Opp. Party

Mr. Tarini Prasad Tripathy, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
21.09.2022

Order No.

2. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition prays for a direction to learned Judge, Family Court, Bhubaneswar to dispose of C.P. No.547 of 2022 filed under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act') by waiving the cooling off period.
3. Mr. Acharya, learned counsel for the Petitioner submits that although the marriage between the parties to the writ petition was solemnized on 28th February, 2016, but unfortunately there was a marital discord between them and they are staying separately since December, 2020. The marriage between the parties has broken down irretrievably. Both the parties are career oriented. Hence, they filed C.P. No.547 of 2022 under Section 13-B of the Act to pass a decree of divorce by consent. Although an application to waive the cooling off period of six months in terms of Section 13-B (2) of the Act was filed, but learned Judge, Family Court rejected

the same vide his order dated 2nd August, 2022. Hence, this writ petition has been filed.

4. Mr. Acharya, learned counsel for the Petitioner submits that parties have agreed to waive the cooling off period, so that they can pursue their career independently. By the time of first motion of the petition, the parties had already lived separately for more than 18 months. Thus, the requirements as laid down in the ratio in *Amardeep Singh –v- Harveen Kaur*, reported in 2017 (8) SCC 475 and *Amit Kumar –v- Suman Beniwal*, reported in 2021 SCC Online 1270 are fulfilled in the instant case. Hence, he prays for a direction to the learned Judge, Family Court, Bhubaneswar to waive the cooling off period of six months and entertain the application filed under Section 13-B of the Act on its own merit.

5. Mr. Tripathy, learned counsel for the Opposite Party (Wife) by filing affidavit supports the submission made by learned counsel for the Petitioner. It is his submission that it will be in the interest of justice, if the petition under Section 13-B of the Act is disposed of by waiving the cooling off period, as there is no possibility of reunion between the parties.

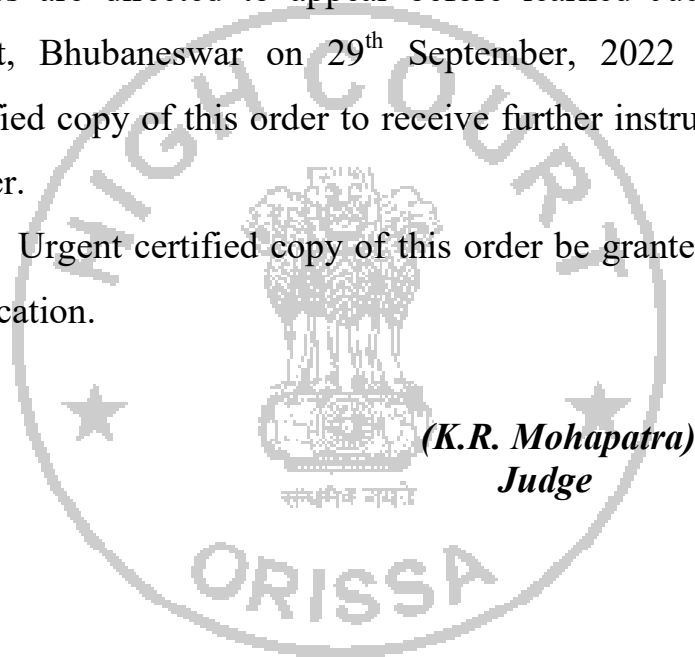
6. Taking into consideration the submissions made by learned counsel for the parties, this Court keeping in view that there is no chance of reunion between the parties and they want to pursue their career independently, is of the considered opinion that the petition under Section 13-B of the Act should be disposed of on merit waiving the cooling off period of six months, more particularly when the parties have already

remained separately more than 20 months by the time the first motion was made.

7. Accordingly, the writ petition is allowed. Learned Judge, Family Court, Bhubaneswar is directed to take up the petition under Section 13-B of the Act and dispose of the same on its own merit in accordance with law waiving the cooling off period of six months.

8. In order to avoid further delay in disposal of the petition, parties are directed to appear before learned Judge, Family Court, Bhubaneswar on 29th September, 2022 along with certified copy of this order to receive further instruction in the matter.

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



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