

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 29883 of 2022

Satyajeet Mohanty

....

Petitioner

Mr.Banshidhar Baug, Advocate

-versus-

Ipsa Pradhan

....

Opp. Party

Mr. S.S.Rao, Advocate

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

Order No.

**ORDER
15.11.2022**

01. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 28th October, 2022 (Annexure-4) passed by learned Judge, Family Court, Bhubaneswar in CP No.858 of 2022, whereby an application to waive the cooling off period in dealing with an application under Section 13-B of the Hindu Marriage Act, 1955 (for short, 'the Act'), has been rejected.
3. Mr. Baug, learned counsel for the Petitioner submits that marriage between the parties was solemnized on 27th November, 2015. Due to dissension they are living separately since 20th January, 2018. As there is no chance of re-union between the parties they filed an application under Section 13-B of the Act read with Section 7 of the Family Courts Act, 1984 for dissolution of marriage by a decree of divorce on mutual consent. During pendency of the application under Section 13-B of the Act, parties to the proceeding also filed a joint application

on 26th October, 2022, to waive the cooling-off period of six months as provided under Section 13-B(2) of the Act and to adjudicate the application under Section 13-B of the said Act. The said application was rejected vide order dated 28th October, 2022. Hence, this writ petition has been filed. Mr. Baug, learned counsel placed reliance upon the ratio in the case of **Amardeep Singh Vs. Harveen Kaur**, reported in (2017) 8 SCC 746, wherein it is held as 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 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.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the concerned Court.

20. Since we are of the view that the period mentioned in Section 13B(2) is not mandatory but directory, it will be open to the Court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.”

It is his submission that provision of Section 13-B (2) of the Act is not mandatory and directory in nature. If the parties satisfy the conditions as mentioned in para-19 of the case law stated supra, an application under Section 13-B of the Act can be entertained by waiving the cooling-off period. Learned Judge, Family Court, did not at all delved into this material aspect of the matter and passed the impugned order. It is his submission that the Petitioner is serving in Merchant Navy and is scheduled to leave India by 3rd Week of November, 2022. In the meantime, he has sought for extension of his joining for a period of two weeks. In that view of the matter, unless the application under Section 13-B of the Act is entertained by waiving the cooling-off period both parties will suffer irreparable loss.

4. Mr. Rao, learned counsel who has instruction to appear on behalf of the Opposite Party, concedes to the submission made by learned counsel for the Petitioner and contends that there is no likelihood of re-union between the parties. In order to pursue their career independently application under Section 13-B of the Act should be entertained at the earliest by waiving cooling-off period.

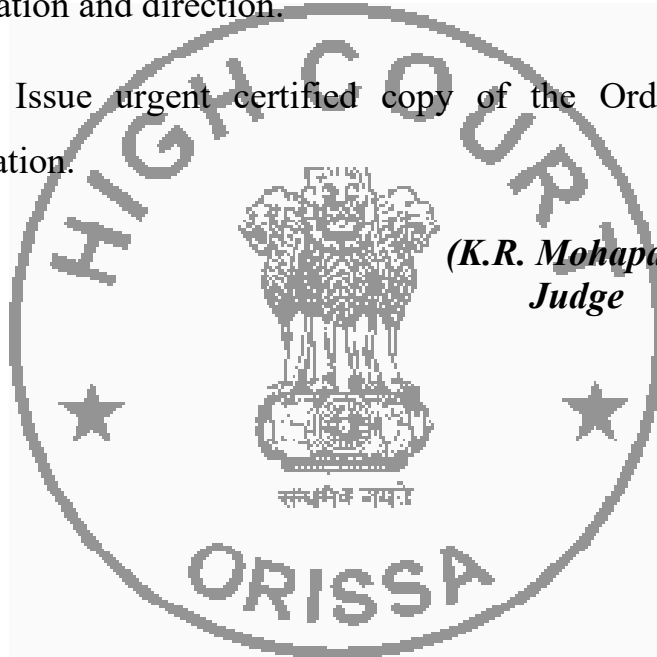
5. Considering the rival contentions of the parties and on perusal of the impugned order, it appears that learned Judge, Family Court has not at all made endeavour to examine the petition to waive cooling-off period in terms of the principles set out by Hon'ble Supreme Court in *Amardeep Singh (supra)*. Hence, the matter requires reconsideration at an early date, as the Petitioner is scheduled to leave India within a short period.

6. Accordingly, this Court, while setting aside the impugned order dated 28th October, 2022 (Annexure-4), directs

learned Judge, Family Court, Bhubaneswar to consider the application filed under Section 13-B(2) of the Act, as expeditiously as possible, preferably within a period of seven days from the date of filing of certified copy of this order. On the date fixed by learned Judge, Family Court, the parties shall appear in person and cooperate with the Family Court for disposal of the said petition either on the same day or on an adjourned date not beyond three working days.

7. The writ petition is disposed of with the aforesaid observation and direction.

Issue urgent certified copy of the Order on proper application.



(K.R. Mohapatra)
Judge

s.s.satapathy