

IN THE COURT OF JUDGE, FAMILY COURT, BHUBANESWAR

C.P. No. 458 of 2014

1. Sanjaya Kumar Dalabehera, aged about 28 years,
S/o-Brundaban Dalabehera,
At-Malisahi, P.O.-Rankadeuli,
Now (P.O.-Deulasahi),
P.S.-Sarankulu, Dist-Nayagarh,
At present:- Kokila Garden Duplex No.1
Pokhariput, Air Filed,
Dist-Khurda.
2. Santilata Nayak, aged about 27 years,
W/o- Sanjaya Kumar Dalabehera,
D/o-Chema Nayak,
At-Malisahi, P.O.-Rankadeuli,
Now (P.O.-Deulasahi),
P.S.-Sarankulu,
Dist-Nayagarh,
At present:- P.O.-Jharapada,
P.S.-Laxmisagar, Dist-Khurda.

Order dated 25.10.2014

This order arises out of a petition dated 13.10.2014 filed by both the petitioners praying to pass a decree of divorce on mutual consent by waiving out the statutory period of six months on the ground that the remarriage of the petitioner No.2 is fixed to be solemnized on 02.12.2014.

2. The back drop of filing of the present petition may be stated lucidly thus:- 'The parties are married spouses whose marriage was solemnized on 20.10.2009 on Special Marriage Act 1954 (hereinafter be referred as the Act of 1954). The parties have been residing separately since 20.10.2009. There is no question of reunion,

reconciliation or rejoining between them in future due to non matching of their mind and mental hardship. Hence both the parties filed a petition u/s. 28 of the Special Marriage Act, 1954 for mutual divorce on 13.10.2014 and the present petition to waive out the cooling period of six months.’

3. Section 28 (2) of the Special Marriage Act, 1954 spells out thus:-

“ on the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months) after the said date, if the petition is not withdrawn in the meantime, the district Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

4. Section 13 (B) (2) of the Hindu Marriage Act, 1954 (herein after be referred as the act of 1955) which is pari materia to section 28 (2) of the Act, 1954 reads as follows:-

“ On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (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 enquiry as to 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 decree.

5. From the language of the aforesaid two sections, it is as much clear as a noon day that the wait-in period of six months from the date of presentation of the application by both the parties is mandatory. In *Neeti Malviya V. Rakesh Malviya 2010 (5) SCJ 420*. It has been laid down that the period prescribed in sub-section (2) of the Section 13 (B) of the Act, 1955 can be waived or reduced by the Supreme Court in exercise of its jurisdiction under Article 142 of the Constitution. (See also *Anil Kumar Jain v Maya Jain 2009 (8) SCJ 83=2009 (2) DMC 449=2009 UJ (SC) 4071=2009 (4) All WC 3635=2008) 8 Mad. LJ 105*). It has further been held that neither High Court nor Civil Court can pass orders before the period prescribed under the provisions of the Act or on the grounds not provided for in Section 13 or 13 (B) of the Act. Although the parties have filed decisions reported in *Hanamappa Chetrappa Koppal & another Vrs. Nil* reported in 1991 Civil Court cases 515 (Karnataka), *Prinyanka Khanna Vrs Amit Khanna* reported in 2012(2) Civil Court cases 081 (S.C), *Amarjit Kaur Vrs. Bhupinder Singh* reported in 2007 (3) Civil Court cases 229 (P &H), *Sonali & another VRs.Nil* reported in 2007 (4) Civil Court cases 489 (Bombay), *Niti Arora Vrs. Rohit Vij* reported in 2009 (2) Civil Court cases 803 (P & H), *Vijay Kumar Vrs. Smt. Surinder Kaur @ Sunita* reported in 2008(1) Civil Court Cases 24 (P & H), *K. Thiruvengadam Vrs. Non* reported in 2008 (2) Civil Court Cases 674 (Madras) and C.P. No. 603/2011 yet, the principle laid down in the aforesaid cited case is not applicable to the present case in view of the Apex Court decision referred hereinbefore. Except, the Apex Court decision, the other case laws relied upon by the parties were rendered before Anil Jain's case cited (supra) and therefore are impliedly overruled. The Apex Court in case of *Prinayanka Khanna Vrs. Amrit Khanna* reported in

2012 (2) Civil Court Cases 081 (S.C) rendered by exercising its extraordinary jurisdiction under Article 142 that decision keeping in view of numbers of litigations between the parties and of compromise for termination of litigation. The Hon'ble Apex Court has not set out any principle of law. Therefore, the aforesaid case is not applicable to the fact and circumstances of the present case. Accordingly, I am not inclined to waive the cooling period of six months. Hence, the petition stands rejected. Put up on 14.04.2015 for hearing of the case.

Dictated

Judge, Family Court,
Bhubaneswar.