

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No. 7917 of 2013 (O&M)

Date of decision: November 26, 2015

Parveen Kumar

...Petitioner

Versus

Smt. Sonia

...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

- 1. Whether Reporters of local papers may be allowed to see the judgment? Yes**
- 2. To be referred to the Reporters or not ? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. MS Kathuria, Advocate,
for the petitioner.

K. KANNAN, J. (Oral)

1. The husband, who paid ₹8 lakhs by way of settlement entered between the husband and the wife at the time of signing the petition filed for divorce by mutual consent was aggrieved that after the payment and the statement of the wife recorded in court in the first motion, the wife failed to stand by her plea at the second motion brought six months after the first date for recording the mutual consent. The court disallowed divorce by mutual consent and the plea on behalf of the husband is that the Court ought to have allowed the petition or the wife must have been directed at least to re-pay the amount received by her.

2. In my view, there shall be no scope for matrimonial court to direct any re-payment of the amount since, it is a moot point whether the amount paid could be treated as a consideration for divorce and if it is,

whether it will be opposed to public policy or not. If the amount is towards permanent alimony, the point that could still be relevant is whether there are justifiable circumstances for separate living and if not, what would be the amount that could be directed for refund. If there is a justifiable ground, the point that might require to be examined would be whether the amount received could forfeit any prospect of future claim. I have outlined the complexity of issues involved only in order that a decree for divorce by mutual consent could not be forced on parties and the matter could be relegated only by separate proceedings.

3. The consent for divorce must be at the time of filing of the petition and must continue throughout for six months continuously, when the court is satisfied that neither party has changed his or her stand. If anyone dithers, the action is bound to fail and it is unnecessary for the court to examine why it failed. On the other hand, only if the parties express consent at the 2nd motion also, the court shall satisfy itself that it is voluntary and there is no force, coercion or fraud in securing the consent and that there is a full accord and satisfaction. There is no scope for interference with the order already passed and the revision petitioner will exercise his own independent action in the manner that is permissible by law.

3. With the above observation, the revision petition is disposed of.

November 26, 2015
prem

(K.KANNAN)
JUDGE