

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 13177-CII of 2014 in/and
FAO-M-233 of 2002 (O&M)

Date of Decision: 14.1.2015

Rajinder Pal

....Appellant.

Versus

Ranjana Rani

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE SNEH PRASHAR.**

PRESENT: Mr. D.K. Nagar, Advocate for
Mr. R.S. Chauhan, Advocate for the appellant.

Mr. R.S. Manhas, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. In this appeal, the appellant-husband has challenged the judgment and decree dated 20.9.2002 passed by the Additional District Judge, Gurdaspur, whereby the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (In short, "the Act") for dissolution of marriage by a decree of divorce, was dismissed.

2. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized 9.3.1996 at Kabar Union, Dharamshala according to Hindu rites and ceremonies. After the marriage, the parties lived together as husband and wife. Out of the said wedlock, a female child, namely, Kannu was born on 27.11.1996. However, due to temperamental differences and change in the attitude, the parties could not live together as husband and wife under one roof. Several efforts were made to reconcile the matter, but all in vain. Accordingly, the

appellant filed a petition under Section 13 of the Act for dissolution of marriage by passing a decree of divorce. The said petition was contested by the respondent by filing a written statement. Various preliminary objections were raised. The averments made in the petition were controverted and a prayer for dismissal of the same was made. The appellant filed replication controverting the averments made in the written statement. The trial court on appreciation of oral as well as documentary evidence led by the parties dismissed the petition filed under Section 13 of the Act for a decree of divorce on the ground of cruelty and desertion vide judgment and decree dated 20.9.2002. Hence, the present appeal.

3. During the pendency of the appeal, the parties have amicably resolved their differences. As per the terms and conditions entered between the parties by way of settlement dated 12.12.2013, Ex.C1, joint petition bearing C.M. No.13177-CII of 2014 was filed under Section 13-B of the Act for grant of a decree of divorce by mutual consent.

4. As per the terms and conditions entered between the parties, an application bearing CM No. 13176-CII of 2014 was filed for converting the original petition under Section 13 of the Act into a petition under Section 13-B of the Act which has also been filed separately bearing CM No. 13177-CII of 2014. The said application bearing CM No. 13176-CII of 2014 was allowed as prayed for by this Court vide order dated 22.4.2014 and the joint petition bearing CM No. 13177-CII of 2014 was taken on record.

5. Both the parties made their respective statements on

22.4.2014 as first motion for dissolution of the marriage by mutual consent under Section 13-B of the Act. The case was adjourned on the said date for 28.10.2014 and thereafter to various dates. Today i.e. 14.1.2015, the case was adjourned for arguments.

6. Appellant-Rajinder Pal and respondent-Ranjana are present in Court today. They have been identified by their respective counsel. The second motion statements of the parties i.e. appellant-husband and respondent-wife have been recorded on solemn affirmation. Both the parties have agreed for divorce by way of mutual consent under Section 13-B of the Act. They have confirmed that a joint petition under Section 13-B of the Act has been presented by them for grant of decree of divorce by mutual consent. The respondent-wife had stated that in terms of the compromise, Ex.C1, she had received all the amount and nothing remains due towards the appellant-husband. Both the parties have stated that they shall remain bound by the terms and conditions of the compromise dated 12.12.2013, Ex.C1. The parties have stated that they are agreed to get the marriage dissolved by mutual consent in terms of agreement dated 12.12.2013, Ex.C1.

7. Section 13-B of the Act reads thus:

“13B. Divorce by mutual consent.-(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, (68 of 1976) on the

ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) 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 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.”

8. A plain reading of sub-section (1) shows that the parties to the marriage wherever agree by mutual consent that the marriage should be dissolved by a decree of divorce on the ground that they have been living separately for a period of one year or more, both the parties may present a petition for divorce to the District Court. On presentation of such petition, statements by way of first motion would be recorded. Under sub-section (2), second motion would be required to be made which should be after six months from the date of presentation of the petition referred in sub-section (1) and not later than eighteen months from the date of first motion where the petition has not been withdrawn. The Court, on being satisfied after hearing the parties pass a decree of

divorce to be effective from the date of the decree.

9. The Apex Court in **Hitesh Bhatnagar Vs. Deepa Bhatnagar, AIR 2011 (SC) 1637**, explained the scope of Section 13-B of the Act as under:-

“14) The language employed in Section 13B(2) of the Act is clear. The Court is bound to pass a decree of divorce declaring the marriage of the parties before it to be dissolved with effect from the date of the decree, if the following conditions are met:

a. A second motion of both the parties is made not before 6 months from the date of filing of the petition as required under subsection (1) and not later than 18 months;

b. After hearing the parties and making such inquiry as it thinks fit, the Court is satisfied that the averments in the petition are true; and

c. The petition is not withdrawn by either party at any time before passing the decree;

15) In other words, if the second motion is not made within the period of 18 months, then the Court is not bound to pass a decree of divorce by mutual consent. Besides, from the language of the Section, as well as the settled law, it is clear that one of the parties may withdraw their consent at any time before the passing of the decree. The most important requirement for a grant of a divorce by mutual consent is free consent of both the parties. In other words, unless there is a complete agreement between husband and wife for the dissolution of the marriage and unless the Court is completely satisfied, it cannot grant a decree for divorce by mutual consent. Otherwise, in our view, the expression ‘divorce by

mutual consent' would be otiose."

10. In view of above and after perusing the statements made by the parties in Court on 22.4.2014 (first motion) and today i.e. 14.1.2015 (second motion) and compromise dated 12.12.2013, Ex.C1, we are satisfied that the averments made in the petition are true and requirements of Section 13-B of the Act are satisfied and the parties be granted divorce by way of mutual consent. Accordingly, joint petition (C.M. No.13177-CII of 2014) which is supported by affidavits of the appellant as well as the respondent, is allowed. Consequently, a decree of divorce under Section 13-B of the Act is passed effective from today by modifying the judgment and decree dated 20.9.2002 passed by the trial Court.

11. It is further observed that the parties shall remain bound by the statements and terms of the compromise dated 12.12.2013, Ex.C1. However, in case any of the parties resiles from the statements or terms of the compromise, it shall be open to the other party to avail any remedy in accordance with law.

12. In view of above, the present appeal stands disposed of.

13. CM No. 25006-CII of 2014 also stands disposed of.

**(AJAY KUMAR MITTAL)
JUDGE**

January 14, 2015
gbs

**(SNEH PRASHAR)
JUDGE**