

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-169 of 2009

DATE OF DECISION: MARCH 2, 2015

HARINDER PAL SINGH

...APPELLANT

VERSUS

SMT. RAMANDEEP KAUR

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. NAVJEET SODHI, ADVOCATE FOR THE APPELLANT.
MR. G.P.S.BAL, ADVOCATE FOR THE RESPONDENT.

M. JEYAPPAUL, J.

1. The present appeal is preferred by the husband Harinder Pal Singh to strike-off part of the directions issued by the trial Court while passing a decree of dissolution of marriage by mutual consent of the parties.

2. Appellant Harinder Pal Singh figuring as Party 1 and the respondent Smt.Ramandeep Kaur figuring as Party 2 moved a petition under Section 13-B of the Hindu Marriage Act for dissolution of marriage by a decree of divorce by mutual consent. The appellant paid a sum of ₹5 lacs towards her maintenance and the maintenance of minor child born to them. They had also agreed that the female child, namely, Mr.Nimrat shall remain in the custody of the respondent herein. The appellant has waived his right to claim the custody of the minor child. They had also agreed to withdraw the respective cases filed by them. With the above terms and conditions, they agreed to part ways amicably and pursuant to which they filed the

above petition under Section 13-B of the Act. The trial Court granted divorce by mutual consent. While passing the decree of divorce by mutual consent, the following direction also was issued by the trial Court and the same is under challenge before this Court:-

“Before parting with this order, it is made clear that the daughter of the parties will retain lien over the ancestral property of his father and grand father and will be able to claim out of that property and ultimately, when she will attain age of majority i.e. after 18 years when she will become major she will be entitled to receive her share falling in her behalf. During this period, husband of the petitioner Harinder Pal Singh and his father will not alienate the suit property except without permission of the court to the detriment of the interest of the minor's daughter of the wedlock which has been dissolved by this decree of divorce by consent. These directions are to be meticulously followed”

3. The appellant moved a petition for review of the above order before the trial Court. But the trial Court rejected such a plea on the ground that the trial Court has every authority to pass such a direction in the interest of justice to protect the interest of minor.

4. Learned counsel appearing for the appellant submitted that the trial Court had acted beyond the scope of Section 13-B of the Hindu Marriage Act. No issue as regards provision to be made to the minor was raised by either of the parties. No issue also was formulated as regards thereto. Therefore, the trial Court has committed an error in passing such a

direction, it was submitted.

5. Learned counsel appearing for the respondent-wife seriously contended, referring to Section 25 and 26 of the Hindu Marriage Act, 1955 that the trial Court has the authority to pass such orders making provision for the maintenance of the child in order to protect the interest of the minor. It is his further submission that the order passed by the trial Court is well within the ambit of the Hindu Marriage Act, 1955.

6. Both the parties having arrived at a compromise to part ways on certain specific terms and conditions, moved the trial Court invoking the enabling provision under Section 13-B of the Hindu Marriage Act, 1955. Contentious issues cannot be the subject matter of discussion under Section 13-B of the Act. Only in the aftermath of the mutually agreed terms and conditions of the parties, dissolution of marriage by a decree of mutual consent is passed by the Court. If the parties do not agree on certain issues arisen between them, they would not file any petition jointly praying for a decree of divorce by mutual consent.

7. In the instant case, the terms and conditions mutually arrived at between the parties before filing the petition under Section 13-B of the Act would disclose that the respondent had agreed to have the custody of the child born to them and also agreed to receive a sum of ₹5 lacs in lump-sum, not only for her maintenance, but also for the maintenance of the child. The parties had not thought of making a provision in the property of the appellant or the properties of the father of the appellant. The minor child is entitled to get a share in the property of the appellant or in the properties of the appellant's father only within the ambit and scope of the Hindu

Succession Act, 1956. Her entitlement to a share in their properties as per the above Act cannot be curtailed by the appellant and the respondent even by way of compromise. It is found that the trial Court, without any issue having arisen as regards the lien of the minor over the property of the appellant or his father, chose to grant lien over the property of the appellant and his father.

8. It is a settled position of law that unless the parties are directed to address a particular issue arisen in the *lis*, no Court can pass any direction affecting the interest of one or the other, behind their back.

9. There is no material to show that the issue as regards the lien of the minor over the property of the appellant and his father was the subject matter of adjudication before the trial Court. The petition under Section 13-B of the Hindu Marriage Act, 1955 not even vaguely refers to the lien for the minor to be created in the property of the appellant and his father. Even the counsel before the trial Court would not have addressed any argument before the trial Court with respect thereto. No issue also was formulated for discussion by the trial Court. The trial Court is not supposed to issue such directions in its whims and fancies.

10. Of course, Sections 25 and 26 of the Hindu Marriage Act, 1955 speak of a provision for maintenance to be made by the trial Court while passing any orders under the Hindu Marriage Act, 1955.

11. Firstly, the proposed provision to be made for the minor shall be brought to the notice of both the parties to address their argument and counter argument. Secondly, the trial Court acting on the provision under Section 13-B of the Hindu Marriage Act shall pass a decree only in terms of

the mutual consent arrived at between the parties. Had the provision for maintenance in the shape of lien contemplated under the impugned order behind the back of both the parties been brought to the notice of the appellant, it is quite probable that the appellant would not have agreed for such terms. He might have withdrawn his consent for divorce by mutual consent. The trial Court cannot traverse beyond the mutual consent agreed between the parties, while passing a decree under Section 13-B of the Hindu Marriage Act, 1955. The trial Court also can pass an order for maintenance under the scheme of Sections 25 and 26 of the Act only on the agreed terms of the parties while passing a decree by mutual consent invoking the provision under Section 13-B of the Act.

12. In our considered view, the trial Court had fallen in error in passing the above direction beyond the scope of Section 13-B of the Act behind the back of the parties.

13. In view of the above, the above quoted directions issued by the trial Court found in paragraph No.2 hereinabove stand struck off. The appeal is accordingly allowed. There is no order as to cost.

(M. JEYAPPAUL)
JUDGE

March 2, 2015
Gulati

(RAJ RAHUL GARG)
JUDGE