

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

FAO-M-106 of 2010 (O & M)
Date of Decision : 21.4.2015

Dinesh Kumar

....Appellant

Versus

Smt. Sushma

.....Respondent

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

Present : Mr. A.S. Narang, Advocate, for the appellant
Mr. S.P. Chahar, Advocate, for the respondent

M. JEYAPPAUL, J. (Oral)

This appeal is preferred by the husband Dinesh Kumar, against the dismissal of his petition filed under Section 13 of the Hindu Marriage Act, 1955 (in short 'the Act').

During the pendency of this appeal, both the parties have amicably settled their dispute. The respondent/wife is prepared to receive a sum of ₹ 5,50,000/-towards permanent alimony in full quit and the appellant/husband is also prepared to pay the said amount.

In view of the above terms of settlement, the appellant, in fact, brought a demand draft for a sum of ₹ 5,50,000/-towards permanent alimony in full quit.

The fact remains that the petition was filed by the husband under Section 13 of the Act before the trial Court. Just because the parties have amicably settled their matrimonial dispute, the judgment of the trial

Court, on the petition filed under Section 13 of the Act, cannot be upset. The remedy available for the parties is to approach the trial Court with a joint petition invoking the provisions of Section 13 B of the Act. Of course, they can also move an application to convert the petition, already filed under Section 13 of the Act, into one under Section 13 B of the Act, to avoid delay and multiplicity of proceedings.

In view of the fact that both the parties have amicably settled their dispute, the judgment and decree passed by the trial Court, dismissing the petition under Section 13 of the Act filed by the husband, stands set aside and the matter is remanded to the trial Court for fresh disposal after entertaining the application, filed by the parties jointly to convert the petition under Section 13 of the Act already filed before the trial Court into one under Section 13 B of the Act and proceed with the same in accordance with law.

We also record the submissions made by learned counsel appearing for the appellant that a fresh draft for a sum of ₹ 5,50,000/- would be taken by the appellant/husband and he will tender the same during the course of second motion moved before the trial Court.

Both the parties shall appear before the trial Court on 5.5.2015.

The appeal is disposed of accordingly.

(M. JEYAPPAUL)
JUDGE

(RAJ RAHUL GARG)
JUDGE

21.4.2015
Ashwani