

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-12 of 2013 (O&M)

Date of Decision:-17.03.2015.

Rahul Soni

.....Appellant

Versus

Neeru Soni

.....Respondent

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE SHEKHAR DHAWAN**

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

Present: Mr. Kunal Dawar, Advocate for the appellant.

Mr. Aftab Singh Khara, Advocate for the respondent.

SHEKHAR DHAWAN, J.

Appellant husband has challenged the order dated 08.10.21012, passed by Additional District and Sessions Judge, Karnal, whereby, petition under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as 'Act') for grant of divorce by way of mutual consent, was dismissed.

Brief facts of the case are that appellant and his wife Smt. Neeru Soni had filed a joint petition under Section 13-B(1) of the Act for passing decree of divorce on the ground of mutual consent. During the proceedings, the parties arrived at settlement. Joint

statement of the parties at the stage of first motion was recorded by the Court on 01.03.2012 and the case was posted for 03.09.2012. At that stage, respondent wife changed her mind and had not come forward for making statement so as to pass decree of divorce on the ground of mutual consent. Accordingly, the trial Judge dismissed the petition under Section 13-B of the Act vide order dated 08.10.2012.

Mr. Kunal Dawar, Advocate learned counsel for the appellant took the plea that the Trial Judge has not considered the matter in its right prospective because the joint petition for the grant of decree of divorce was filed as both the parties had consented for the same. Payment of ₹ 4,25,000/- was to be made in two instalments and out of that payment of ₹ 2,00,000/- was received by the respondent-wife at the first motion stage. Thereafter, respondent backed out. Although the matter was settled between the parties with the intervention of Mediation Center as well. Appellant had put in appearance in the Court along with two bank drafts i.e. one of ₹ 2,25,000/- and another bank draft of ₹ 1,25,000/-. Respondent wife returned the amount of ₹ 2,00,000/- already accepted by her.

Main contention of appellant counsel is that if the parties back out after making statement before the Court at the first stage and after settlement with intervention of Mediation Center, the very sanctity and purpose of amicable settlement through the process of mediation would stand totally eroded. On this point reliance was placed upon judgment from Hon'ble Delhi High Court in case **Naveen**

Kumar Vs. Khilya Devi and another 2011 (183) DLT 381 wherein such a view was taken by the Hon'ble Delhi High Court.

Learned counsel for the respondent raised the contention that the very purpose giving opportunity to the parties for rethinking after a period of six months has been set up in the Act just to give some time to the parties to reconsider the entire matter and if the parties are agreeable to the passing of divorce on the ground of mutual consent, only then the Courts can pass decree of divorce. However, in this case respondent-wife duly considered the matter at the time of second motion stage and intentionally did not make statement for grant of decree of divorce. Thus, as per provisions of the law, there is absolutely no illegality in the order passed by Learned Trial Judge and appeal is without any merit and same be dismissed.

We have duly considered the rival contentions raised by learned counsel for both the parties and also gone through the order passed by learned trial Judge on 8.10.2012. As per provisions of **Section 13-B of the Act**, the Legislature had to the best of their wisdom given option to both the parties to re-consider the entire matter at the second stage that too after lapse of period of six months from stage of first motion. In the case in hand, the respondent-wife had lawfully exercised that option by not giving her consent for grant of decree of divorce on the ground of mutual consent and the learned Trial Judge rightly dismissed the petition for

grant of decree of divorce on the basis of mutual consent as there was no mutual consent between the parties for grant of decree on that day. No doubt the proceedings before Mediation Centre are meant for advancement of justice and the same are tools and techniques and alternative modes for settlement of disputes. But the said modes cannot decide the matter against strict provisions of law.

In view of the above, the present appeal is without merit and same stands dismissed.

(M. JEYAPPAUL)
JUDGE

(SHEKHER DHAWAN)
JUDGE

March 17, 2015.

sandeep sethi