

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM No. 13282-CII of 2014 in/and
FAO-M-185 of 2013 (O&M)

Date of Decision: 16.1.2015

Harpreet Kaur

....Appellant.

Versus

Abhishek Kumar

...Respondent.

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

PRESENT: Mr. HPS Rahi, Advocate for the appellant.

Mr. J.S. Brar, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay of 347 days in filing the appeal is condoned.
2. In this appeal, the appellant-wife has challenged the judgment and decree dated 19.1.2012 passed by the Additional District Judge, Ludhiana, whereby the petition filed by her under Section 13 of the Hindu Marriage Act, 1955 (In short, "the Act") for dissolution of marriage between the parties by a decree of divorce, was dismissed.
2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein are that the marriage between the parties was solemnized on 4.2.2009 at Khanna in accordance with Sikh rites. The parties lived together as husband and wife and cohabited as such. Out of the said wedlock, no child was born. However, due to some temperamental differences between the parties after their marriage, they could not pull together smoothly because of incompatibility of their

nature. It was not possible for them to live together or to lead a normal marital life. Due to regular disputes between the parties, they were living separately. Accordingly, the appellant filed a petition under Section 13 of the Act for dissolution of marriage between the parties by a decree of divorce. The said petition was contested by the respondent by filing a written statement. The averments made in the petition were controverted and a prayer for dismissal of the same was made. 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 vide judgment and decree dated 19.1.2012. 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 compromise, joint petition bearing C.M. No.13282-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. 13283-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. 13282-CII of 2014. The said application bearing CM No. 13283-CII of 2014 was allowed as prayed for by this Court vide order dated 8.7.2014 and the joint petition bearing CM No. 13282-CII of 2014 was taken on record.

5. Both the parties made their respective statements on 8.7.2014 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 9.1.2015 and thereafter to today i.e. 16.1.2015 for recording the statements of the parties by way of second motion as required under Section 13-B of the Act.

6. Appellant-Harpreet Kaur and respondent-Abhishek Kumar are present in Court today. They have been identified by their respective counsel. The second motion statements of the parties i.e. appellant-wife and respondent-husband 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. They have also filed affidavits dated 8.7.2014, Exs. C1 and C2 in the Court. The parties have stated that they are agreed to get the marriage dissolved by mutual consent in terms of affidavits dated 8.7.2014, Ex.C1 and Ex.C2 and in terms of the joint petition filed under Section 13-B of the Act. Further, the wife stated that she has no objection if FIR No. 95 dated 11.6.2009, under Sections 406, 498-A, 506 of the Indian Penal Code, registered at Police Station City Khanna, District Ludhiana by her is quashed and she had also filed an affidavit dated 9.1.2015 in CRM-M-24189 of 2014 accepting the quashing of FIR.

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, statement 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 8.7.2014 (first motion) and today i.e. 16.1.2015 (second motion) and the affidavits Exs.C1 and C2, 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.13282-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 19.1.2012 passed by the trial Court.

11. It is further observed that the parties shall remain bound by the statements and terms of the affidavits dated 8.7.2014, Ex.C1 and Ex.C2 and the terms of the joint petition filed under Section 13-B of the Act. However, in case any of the parties resiles from the statements or terms of the affidavits, it shall be open to the other party to avail any remedy in accordance with law.

12. Further, vide order of even date passed in CRM-M-24189 of

2014, FIR No. 95 dated 11.6.2009, under Sections 406, 498-A, 506 of the Indian Penal Code, registered at Police Station City Khanna, District Ludhiana by the wife against the husband-Abhishek Kumar has been quashed.

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

14. CM Nos. 24790-92-CII of 2013 also stand disposed of.

**(AJAY KUMAR MITTAL)
JUDGE**

January 16, 2015
gbs

**(SNEH PRASHAR)
JUDGE**