

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**FAO No.5933 of 2015 (O&M)
Date of Decision: 02.11.2015**

Deepak SinghAppellant

Versus

PoojaRespondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Tara Chand, Advocate for
Mr. Ashish Naik, Advocate for the appellant.

None for the respondent despite service.

RAJIVE BHALLA, J (ORAL)

The appellant challenges order dated 24.04.2014 passed by the District Judge (Family Court), Bhiwani, dismissing a petition filed under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”).

Counsel for the appellant submits that as the respondent received Rs.1,50,000/- at the time of filing of the petition under Section 13-B of the Act, she was bound to make a statement at the stage of second motion but instead made a false statement that she had given her consent due to a misunderstanding and did not receive Rs.1,50,000/-. The respondent thereafter mislead the trial Court by stating that as the petition has been filed within one year of the marriage it

was not maintainable. The trial Court dismissed the petition without considering that consent has to be inferred from the contents of the petition and the statement made at first motion. The trial Court should have at least ordered refund of Rs.1,50,000/- received by the respondent.

Despite service, no one has put in appearance on behalf of the respondent.

We have heard counsel for the appellant.

A petition under Section 13-B of the Act is founded upon mutual consent. An adverse inference or an inference of consent cannot be drawn against a party which refuses to make a statement at second motion. The trial Court, therefore, rightly dismissed the petition.

However, there is a significant issue that requires an answer namely whether a party who refracts from her consent can be called upon to restitute any amount that she may have received during pendency of a petition under Section 13-B of the Act? A petition for divorce under Section 13-B of the Act is based upon mutual consent. A party receives an amount, at the stage of first motion, in view of parties mutually agreeing to bring the marriage to an end. If the party that receives money refracts from “mutual consent”, such a party would, in our considered opinion, be required to restitute the amount so received. A duty is, therefore, cast

upon a Court seized of such a dispute to restore parties to the position obtaining on the date of filing the petition under Section 13-B of the Act, subject, however, to any defence that the other party may raise.

Consequently, while dismissing the appeal we grant liberty to the appellant to file an appropriate application before the District Judge (Family Court), Bhiwani, for restitution of the amount paid to the respondent. The application, if filed, shall be considered and decided in accordance with law.

**[RAJIVE BHALLA]
JUDGE**

02.11.2015
Vinay

**[REKHA MITTAL]
JUDGE**