

FAO-7542-2015

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-7542-2015

Date of decision : 24.12.2015

Sushil Bhardwaj

... Appellant

Versus

Meenu

... Respondent

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

Present: Mr. Sanjeev Kumar Bawa, Advocate
for the appellant.

Mr. Sandeep Sharma, Advocate
for the respondent.

RAJIVE BHALLA, J.(ORAL)

The appeal arises from an order dated 01.10.2015, passed by the District Judge, Family Court, Gurgaon dismissing a petition filed under Section 13B of the Hindu Marriage Act 1955 (in short 'the Act') for want of the respondent's consent, at the stage of second motion.

Counsel for the appellant submits that as the respondent (wife) voluntarily consented to dissolution of the marriage by mutual consent, filed a petition under Section 13-B of the Act, made a statement at the stage of first motion and received ₹3 lacs as permanent alimony, her consent should have been inferred at the stage of second motion.

Counsel for the respondent on the other hand submits that a

petition under Section 13 of the Act is based upon mutual consent. The parties are granted six months' time, from the stage of first motion to reconsider the matter. The fact that parties filed a joint petition or that parties made a statement at the stage of first motion or that the respondent received permanent alimony, which the respondent vehemently denies, is, therefore, irrelevant.

We have heard counsel for the parties and interacted with the parties to explore the possibility of settlement but our attempt unfortunately failed.

The appellant and the respondent filed a joint petition for grant of decree of divorce by mutual consent. As per the record statements were recorded at the stage of first motion. The respondent, is alleged to have received ₹3 lacs as permanent alimony. At the stage of second motion, however, the respondent did not put in appearance leading to the dismissal of the petition. The appellant's contention that consent should be inferred from the filing of joint petition and or her statement made at the stage of first motion, in our considered opinion, cannot be accepted. A petition under Section 13B of the Act is based, entirely upon mutual consent. Section 13B of the Act provides a six month period to parties, after recording statements in first motion, to reconsider the matter thus leaving parties free even after the filing of a joint petition or making a statement in first motion, to withdraw their consent. An inference of consent cannot be drawn on the basis of a joint petition or a statement

made at the stage of first motion.

Consequently, finding no merit, the appeal is dismissed but with liberty to the appellant to file an appropriate application, before the Family Court, Gurgaon for refund of ₹3 lacs allegedly received by the respondent, subject however to any defence that the respondent, may raise in response to such an application.

(RAJIVE BHALLA)
JUDGE

(REKHA MITTAL)
JUDGE

December 24, 2015.
Davinder Kumar