

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-M-128-2015(O&M)

Date of decision : 01.10.2015

Pawan Kumar

... Appellant

Versus

Mamta Rani

... Respondent

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

Present: Mr.Parminder Singh, Advocate
for the appellant.

Mr.K.S.Dhanora, Advocate
for the respondent.

RAJIVE BHALLA, J.(ORAL)

The appellant challenges order dated 17.10.2014 dismissing a petition, filed by the parties under Section 13-B of the Hindu Marriage Act 1955 (in short 'the Act') and order dated 05.03.2015, rejecting an application for recalling order dated 17.10.2014 and an application for refund of ₹8,80,000/-.

Counsel for the parties submit that both parties filed a petition under Section 13-B of the Act. The Additional District Judge, Karnal recorded the joint statement of parties on 10.03.2014, in first motion and the appellant paid ₹8,80,000/- to the respondent. However, at the stage of second motion, the respondent refused to make a statement leading to the dismissal of the petition. The appellant, thereafter, filed an application for refund of ₹8,80,000/-. The respondent also filed an application for recalling

of order dated 17.10.2014 as she was ready to make a statement in second motion. The Additional District Judge has, however, dismissed both applications for want of power to recall these orders.

Counsel for the parties pray that as parties have resolved their differences that arose before the Court below, at the stage of second motion and are ready to make statements, the impugned orders may be set aside and the petition filed under Section 13-B of the Act may be proceeded with from the stage of second motion.

We have heard counsel for the parties, interacted with the parties, who are present in the Court and perused the impugned orders.

The parties filed a joint petition, under Section 13-B of the Act for dissolution of their marriage, by mutual consent. The trial Court recorded their statements in first motion and the appellant paid ₹8,80,000/- to the respondent. At the stage of second motion, the respondent refused to make a statement. The petition was, therefore, dismissed. The appellant, thereafter, filed an application for refund of ₹8,80,000/- whereas the respondent filed an application for recalling of the order but both applications were dismissed for want of any power to recall the order. The appellant and the respondent have appeared before us in person and stated that they have resolved their differences that arose, before the trial Court, at the stage of second motion and are ready to record statements in second motion.

We have considered the matter in its entirety and find no impediment legal or otherwise in proceeding with the matter from the stage of second motion. The parties have recorded statements in second motion

and filed affidavits which have been taken on record. The parties state that their affidavits filed in the Court may be read as their statements, in second motion. A relevant extract from the statement (affidavit) of Pawan Kumar, reads as under:-

“1. That marriage of the deponent was solemnized on 17.02.2013 with Mamta Rani at Karnal according to Hindu Rites and Ceremonies. Out of this wedlock no child was born. The deponent due to temperamental difference living separately from his wife Mamta Rani since from 01.03.2013 and there is no chance of reconciliation.

2. That the deponent and the other party decided to dissolve their marriage by mutual consent. First statement U/s 13-B of Hindu Marriage Act of the deponent and Mamta Rani has been recorded on 10.03.2014 and the deponent affirmed his first statement and the marriage of the deponent with the Mamta Rani may kindly be dissolved through a decree of divorce by way of mutual consent U/s 13-B of the Hindu Marriage Act, 1955.

3. That the deponent has paid the permanent alimony amount of Rs.10,11,000/- in lieu of full and final settlement of claim of Mamta Rani through the Mediator of her. Mamta Rani out of above settled amount, already received a sum of Rs.8,80,000/- and rest of the amount of Rs.1,31,000/- is paid today in cash to Mamta Rani. In this manner, Mamta Rani received the entire permanent alimony of her full and final settlement of claim.”

A relevant extract from the statement (affidavit) of Mamta Rani, reads as under:-

“1. That marriage of the deponent was solemnized on

17.02.2013 with Pawan Kumar at Karnal according to Hindu Rites and Ceremonies. Out of this wedlock no child was born. The deponent due to temperamental difference living separately from her husband Pawan Kumar since from 01.03.2013 and there is no chance of reconciliation.

2. That the deponent and the other party decided to dissolve their marriage by mutual consent. First statement U/s 13-B of Hindu Marriage Act of the deponent and Pawan Kumar has been recorded on 10.03.2014 and the deponent affirmed his first statement and the marriage of the deponent with the Pawan Kumar may kindly be dissolved through a decree of divorce by way of mutual consent U/s 13-B of the Hindu Marriage Act, 1955.

3. That the deponent has received the permanent alimony amount of Rs.10,11,000/- in lieu of full and final settlement of claim of deponent through her Mediator. The deponent out of above settled amount, already received a sum of Rs.8,80,000/- and rest of the amount of Rs.1,31,000/- is received today in cash from Pawan Kumar. In this manner, deponent received the entire permanent alimony of her full and final settlement of claim. The deponent will not initiate any kind of proceedings against Pawan Kumar.”

A perusal of averments in the petition filed under Section 13-B of the Act, statements made at first and second motion reveal that parties have taken a decision to part ways after a conscious appraisal of the facts. The parties appear to be temperamental unsuited to each other and have, therefore, taken a decision to bring their marriage to an end. The amount of ₹1,31,000/- (balance payment) in cash, has been paid to Mamta Rani, by the

appellant.

Consequently, the appeal is allowed, the impugned orders are set aside and the petition under Section 13 B of the Act is allowed by dissolving marriage of the parties by grant decree of divorce by mutual consent. Decree sheet be drawn up accordingly.

(RAJIVE BHALLA)
JUDGE

(REKHA MITTAL)
JUDGE

October 01, 2015.

Davinder Kumar