

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

**FAO No.M-224 of 2015 (O&M)
Date of Decision: 16.09.2015**

SikanderAppellant

Versus

MamtaRespondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE NAVITA SINGH**

Present: Mr. G.S.Jaswal, Advocate
for the appellant.

Mr. Bhupinder Kumar, Advocate
for the respondent.

RAJIVE BHALLA, J (ORAL)

The parties, though arrayed as appellant and respondent, both challenge order dated 27.02.2015, passed by the District Judge, Chandigarh, dismissing their joint petition, filed under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), for grant of a decree of divorce by mutual consent.

Counsel for the appellant submits that though it is true that at the stage of second motion the appellant did state that parties have been living apart “since last February”, but this inadvertent error, should have been disregarded particularly when parties had categorically averred in the petition, filed under Section 13-B and in statements recorded at first motion that they have been living separately since March, 2013. Counsel for the appellant further submits that the appellant was perplexed at the stage of making of

statement at the second motion and, therefore, made this wrong statement.

Counsel for the respondent states that the respondent-wife does not contest the correctness of the statement made by counsel for the appellant but only prays that instead of remitting the matter, it may be finally decided by this Court by recording statements of parties from the stage of second motion.

Counsel for the respondent also states that the parentage of the respondent-Mamta may be corrected as her father's name is Surinder Singh and not Krishan Kumar and her address may also be corrected as she has shifted to a new address.

A perusal of the petition filed under Section 13-B and statements recorded at the stage of first motion, reveal that parties categorically averred and deposed that they were residing separately since March, 2013, but in his statement at the stage of second motion, the appellant-husband, stated that they had been residing apart since last February, thereby leaving no option with the learned District Judge, to dismiss the petition. The appellant and his counsel, duly supported by the respondent and her counsel, state that the statement of the appellant was an inadvertent error and pray that statements may be recorded afresh from the stage of second motion.

We have considered the request and direct parties to record their statements in second motion. The statements of parties in second motion have been recorded.

Sikander son of late Sh.Subbe Singh (appellant) Mamta daughter of Sh.Surinder Singh, wife of Sikander (the respondent), have also filed separate affidavits Mark 'A' and Mark 'B', which are taken on record as their statements in second motion.

We have heard counsel for the parties and perused the impugned order, the affidavits and the statements.

Both parties have averred in their petition filed, under Section 13-A and deposed at the stage of first motion that they are residing separately since 06.03.2013 and had arrived at a compromise (Ex.P-1) on 23.07.2014, in Women (Cell), Chandigarh, to part ways. Mamta, daughter of Surinder Singh, has deposed in her statement in second motion that she has received her Ishtri Dhan, dowry articles, shall not claim any kind of maintenance, permanent alimony present, past and future and shall not initiate any civil or criminal proceedings against the appellant. She has also deposed that parties have decided to dissolve their marriage by mutual consent as there is no possibility of their residing together or any re-conciliation. She has also deposed that parties have been residing separately since March, 2013.

The appellant Sikander Singh son of Sube Singh has made a similar statement admitting that parties have been residing separately since 06.03.2013.

An appraisal of the aforesaid facts reveals that parties have taken a conscious decision that it is not possible for them to reside together as husband and wife on account of temperamental differences. The prayer for grant of a decree of divorce by mutual consent, does not suffer from any legal impediment and in the absence of any reason to disbelieve the parties, that it is not possible for them to live together as husband and wife, we accept their statements.

Consequently, the appeal is allowed, order dated 27.02.2015, passed by the District Judge, Chandigarh, is set aside and the marriage between the parties is dissolved by granting a decree of divorce by mutual consent. The respondent-Mamta daughter of Sh.Surinder Singh shall not claim maintenance, permanent alimony, past, present or future. Parties shall not file any case against each other and shall withdraw any pending case/trial. Decree sheet be drawn up accordingly.

**[RAJIVE BHALLA]
JUDGE**

16.09.2015
Vinay

**[NAVITA SINGH]
JUDGE**