

IN THE PUNJAB & HARYANA HIGH COURT AT
CHANDIGARH

FAO-M-55-2015

Date of decision : 16.10.2015

Kulwinder Kaur

... Appellant

Versus

Jaspreet Singh

...

Respondent

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

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

Mr. Chirag Wadhawa, Advocate
for the respondent.

RAJIVE BHALLA, J.(ORAL)

The dispute in the present appeal relates to the validity of order, dated 07.01.2015, passed by the Additional District Judge (Adhoc) Fast Track Court, Hoshiarpur dismissing the petition filed under Section 13-B of the Hindu Marriage Act 1955 (hereinafter referred to as 'Act') by holding that parties cannot give assent, whether at first or second motion, through their attorneys and, therefore, must be present in person.

Before dealing with the merits of the controversy, it would be necessary to point out that both parties i.e. the appellant and

respondent reside abroad and filed a petition under Section 13-B of the Act. Both parties are aggrieved by dismissal of the petition on the ground that parties are not present in person.

Counsel for the parties submit that there is no impediment in law to parties filing a petition under Section 13-B of the Act through their attorney. The trial Court in order to satisfy itself about the bonafides of the parties and their statements, could have directed parties to file their respective affidavits instead of dismissing the petition.

Counsel for the parties pray that in view of contents of the petition filed under Section 13B, statements recorded at first and second motion, before the Court below and affidavits filed in Court today as well as affidavit of Manjit Singh son of Hardev Singh (attorney of the appellant), the appeal may be allowed, the impugned order may be set aside and marriage of the parties may be dissolved by grant of decree of divorce, by mutual consent.

We have heard counsel for the parties, perused the impugned judgment and have no hesitation in holding that there is no impediment, in law, to parties filing a petition under Section 13-B of the Act through an attorney. The trial Court has also accepted this position in law but has dismissed the petition on the ground that parties are not present in person. Once the trial Court had accepted that parties could make a statement through their attorneys, all the that it was required to do, so as to satisfy itself of the bonafides of the

parties, was to call upon them to file their duly attested and notarised affidavits, as required by law. However, the trial Court has dismissed the petition for want of the presence of the parties thus compelling parties to file an appeal and delay the dissolution of their marriage.

A due consideration of averments in the petition filed under Section 13 B, the statements made in first and second motion before the trial Court through their attorney, the affidavits filed in Court today in support of these statements reveals that parties have taken a conscious decision, without collusion, coercion or fraud to part ways on account of temperamental differences. As parties are unable to live together as husband and wife and do not want to continue with the marriage, it would be unjust to insist upon their personal presence.

Consequently, we allow the appeal, set aside the impugned judgment and dissolve the marriage between the parties by grant of decree of divorce by mutual consent.

Decree sheet be drawn up accordingly.

(RAJIVE BHALLA)
JUDGE

(REKHA MITTAL)
JUDGE

October 16, 2015.
Davinder Kumar