

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

FAO-M-110-2012

Decided on : 28.01.2016

Sania

.... Appellant

VERSUS

Sumit Kumar

..... Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE LISA GILL

Present: **Mr.A.K.Sharma, Advocate, for the appellant.**

Mr.B.S.Mittal, Advocate, for the respondent.

RAJIVE BHALLA, J. (ORAL)

The appellant challenges judgment and decree dated 01.03.2012, passed by the Additional District Judge, Sirsa, whereby her marriage with the respondent has been dissolved by grant of a decree of divorce.

Counsel for the appellant submits that though there is no prohibition in the Act to a party making an admission of a matrimonial offence but the so called admission made by the appellant and the respondent, is in the nature of a settlement normally recorded under Section 13B of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') and as it does not involve an admission of a matrimonial offence, the trial court had no jurisdiction to dissolve the marriage on the basis of statements made

by the parties.

Counsel for the respondent states that both parties made statements agreeing to a divorce and in furtherance thereof, the respondent agreed to pay Rs.5 lacs to the appellant in full and final settlement of all claims of alimony. The trial court has referred to these statements in the context of voluntary statements made by the parties and, therefore, no fault can be found with the impugned judgment. The appellant having accepted and encashed the amount of Rs.5 lacs, is estopped from filing the present appeal

We have heard counsel for the parties and perused the record.

The question, that calls for an answer is, whether the trial court had jurisdiction to dissolve the marriage on the basis of statements made by the parties agreeing to part ways on payment and acceptance of the permanent alimony of Rs.5 lacs, without filing any petition under Section 13B of the Act?

Section 13 of the Act enumerates the situations in which a party may pray for a decree of divorce and is primarily based upon the fault of the offending spouse, namely, desertion, cruelty, conversion to another religion, incurably of unsound mind, mental disorder, a virulent and incurable form of leprosy, suffering from venereal disease in a communicable form, renouncing the world by entering any religious order for a continuous period not less than two years immediately preceding the filing of the petition etc. Section 13

requires a spouse who approaches a court for dissolution of marriage to plead and prove the ingredients of the grounds upon which he seeks divorce.

A perusal of the impugned judgment reveals that a statement was made by the appellant-wife that she does not wish to live with Sumit Kumar, who in turn made a statement that he agrees to the divorce and shall pay permanent alimony of Rs.5 lacs. The statements do not indicate admission of any ingredients of grounds for divorce enumerated in Section 13 of the Act. The statements made by the parties, read as follows: -

“Statement of Sumit Kmar son of Umesh Kumar, aged 34 years, resident of Nohria Bazar, Sirsa, on SA

I agree to divorce my wife Sania. I am paying Rs.5,00,000/- (Rs. Five lacs only) to my wife as full and final settlement of future maintenance and permanent alimony towards my wife and daughter Kuttu alia Kanishka.

Statement of Sania wife of Sumit Kumar son of Umesh Kumar, aged 33 years, resident of E Block, Sirsa on SA

I do not want to live with my husband Sumit Kumar as there are temperamental differences and it is difficult for me to live with him under one roof. I have no objection if the decree of divorce is passed in favour of my husband Sumit Kumar. My husband has offered Rs.five lacs as full and final settlement of future maintenance and permanent alimony towards me and my daughter Kutu alias Kanishka, which I have received.”

A relevant extract from the impugned judgment, reads as follows: -

“8....However, during the reconciliation proceedings conducted by this court between both the spouses, respondent Sania stated that she does not want to live with Sumit Kumar as she has temperamental differences with Sumit Kumar. The marriage of both the parties has broken down irretrievably and it is not possible for them to live together under one roof. During the

course of arguments, again reconciliation proceedings were held between the parties and both the spouses were granted sufficient time but they have departed from each other. The petitioner has offered to pay Rs.5,00,000/- to the respondent as permanent alimony to be payable to his wife and daughter Kuttu alias Kanishka. Now this court is fully satisfied that both the spouses cannot live together under one roof amicably and their marriage has broken down irretrievably. The petitioner has paid Rs.5,00,000/- to the respondent as full and final settlement towards the permanent alimony of respondent and her daughter which the respondent has accepted in the Court. Respondent has stated that she will deposit this amount in the name of her minor daughter Kuttu alias Kanishka in the form of FDR in a nationalized bank till she attain the age of majority. However the interest will be incurred on the upbringing of Kuttu alias Kanishka, if required. Hence, in these circumstances, the petitioner is entitled to a decree of divorce under Section 13 of the Hindu Marriage Act as the ground of desertion if fully proved....”

A perusal of the aforesaid findings reveals that the trial court has recorded a finding of desertion but there is no reference much less any narrative in the impugned order as to how desertion has been proved. The trial court appears, in an attempt to help the parties, lost sight of the fact that Section 13 of the Act does not provide for dissolution of a marriage by mutual consent. The impugned order is in the nature of an order required to be passed under Section 13B of the Act that prescribes the procedure for dissolution of a marriage by mutual consent. The trial court has also recorded a sentence that the marriage between the parties has irretrievably broken down, apparently oblivious of the fact that irretrievably break down of a marriage is not a ground for divorce. Consequently, we have no option but to allow the appeal and set aside the impugned judgment and decree.

In view of what has been recorded hereinabove, the appeal is allowed, judgment and decree dated 01.03.2012, passed by the Additional District Judge, Sirsa, is set aside and the matter is restored to the Court of Additional District Judge, Sirsa, for proceeding further from the stage of recording of statements of parties on 01.03.2012. The respondent would be at liberty to approach the Additional District Judge, Sirsa, for restitution of the amount of Rs.5 lacs, subject, however, to any defence that the appellant may raise, in this regard.

[RAJIVE BHALLA]
JUDGE

28.01.2016
shamsher

[LISA GILL]
JUDGE