

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

FAO No. 8318 of 2014 (O&M)
Date of decision : February 12, 2016

Ravinder KumarAppellant

Versus

Rekha RaniRespondent

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

Present: Mr. Satbir Rathore, Advocate
for the appellant.

Mr. J.S. Chahal, Advocate
for the respondent.

RAJIVE BHALLA, J.

The appellant challenges judgment dated 10.09.2014 passed by the District Judge (Family Court), Ambala whereby the petition filed by the parties under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act') has been dismissed for want of the respondent's consent, at the stage of second motion.

Counsel for the appellant submits that he does not press the prayer for raising an inference of consent based upon averments in the petition filed under Section 13-B of the Act and statements recorded on first motion but prays that as the respondent has admittedly received ₹6 lakhs as a condition to the parties agreeing to

dissolve their marriage by mutual consent, the respondent may be directed to restitute the amount. In support of his argument, counsel for the appellant relies upon a Division Bench of this Court in **Sukhdeep Kaur versus Ravinder Pal Singh 2014 (3) Civil Court Cases 807.**

Counsel for the respondent, on the other hand, submits that as the petition under Section 13-B of the Act was dismissed for want of consent, the appeal is not maintainable and in case the appellant has any grievance regarding the amount received, he may seek his remedy in accordance with law. Counsel for the respondent further submits that there may be certain claims available to the respondent that may be ordered to be adjusted in case the respondent is required to restitute this amount.

We have heard counsel for the parties, perused the impugned order and considered the Division Bench judgment in Sukhdeep Kaur's case (supra). The question that calls for an answer is whether this Court can direct restitution of the amount of ₹6 lakhs admittedly received by the respondent during proceedings under Section 13-B of the Act?

The parties filed a petition under Section 13-B of the Act for dissolution of marriage by mutual consent. The appellant as recorded by the trial Court, paid ₹6 lakhs to the respondent as permanent alimony. The respondent, however, did not make a statement at the stage of second motion, leaving no option with the trial Court to dismiss the petition. The appellant's prayer, in the context of aforesaid facts, for restitution of ₹6 lakhs must necessarily

succeed. The point in issue namely restitution of the amount received during proceedings under Section 13-B of the Act has been answered in **Sukhdeep Kaur's** case (supra) by holding as follows:-

“ 8. The said pleadings evidently establish that the amount of Rs.6.25 lacs was paid as expenses of marriage, compensation and permanent alimony as had been decided by the respectables. In this view of the matter, the statement dated 10.02.2014 (Annexure P.3) of the appellant that the amount received by her was her 'Streedhana' is not tenable and contradictory to the stand which has been taken in the joint petition (Annexure A.1) filed by the parties. The benefit of the amount which the appellant received for the grant of divorce and on failure of the respondent to consent for divorce though legal would nevertheless entitle the respondent to receive the amount back. Section 144 of the Code of Civil Procedure in this regard is also apposite and the same reads as under:

“144. Application for restitution. -- (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation, reversal, setting aside or modification of the

decree or order.

Explanation.-- For the purposes of sub-section (1) the expressions "Court which passed the decree or order shall be deemed to include.--

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1)."

9. A perusal of the above inter alia shows that where an order is varied or reversed in an appeal, revision or other proceedings or is set aside or is modified in any suit instituted for the purpose, the Court which passed the decree or order shall on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such order. Even otherwise the jurisdiction to make restitution is inherent in every Court and is to be exercised whenever the justice of the case so demands. A litigant cannot use the process of Court so as to surreptitiously obtain a benefit on the representation to do a certain act and thereafter retract

from the representation that had been given but at the same time retain the benefit by taking a different, changed and a contradictory stand. The appellant – wife having received an amount of Rs.6.25 lacs on the representation that she agrees to give divorce at the time of first motion of the proceedings of the joint petition but later on her refusal for divorce at the second motion, though legal, would necessarily imply that the benefit of Rs.6.25 lacs that she received on her representation for divorce is to be refunded and restored. Therefore, the amount which has been received by the appellant in consequence of the statements made at the first motion is liable to be restored to the respondent. In case she has any claim towards her 'Streedhana', she can make such a claim in a Court of law by resorting to appropriate proceedings but it would be impermissible to allow the appellant to take the amount in a surreptitious manner on the representation that she is willing to give divorce and thereafter, retract from the same by taking a different stand that the amount was received by her towards 'Streedhana'.

10. The case of Deepak Kumar v. Poonam Rani, (supra), referred to by the learned counsel for the appellant is not applicable to the facts of the present case. In the said case, the learned counsel has relied upon the following observations:

“Learned counsel points out that the money has been given to her as per the settlement and now she has also married to yet another person. He states this to explain as to why the wife is not even present inspite of service. In my view, it is even irrelevant that wife is not present for Section 23 which sets out the powers of the Court is explicit in its words in the opening of the Section itself, which starts with the words “in any proceeding

under this Act where defended or not”. It means that the fact that the respondent does not defend the action or does not contest the proceeding shall have (sic.) not be relevant for a Court to pass appropriate orders. In *Sanjeeta Dass v. Tapan Kumar Mohanty* (2010) 10 SCC 222, the Hon'ble Supreme Court disapproved the granting of divorce decree merely on the ground that the husband was willing to shell out a sum of Rs.10 lacs as “life term maintenance” for the wife and for the expenses of marriage of their daughter. The Court said “The law does not permit the purchase of a decree of divorce for considerations, with or without the consent of the other side”. Dr. Virendra Kumar points out in the article (supra) that “even if the proceedings would have been initiated under Section 13B, instead of Section 13 of the Act of 1956 (sic.1955), the inducement of the wife to agree to divorce by exempting her to receive in return a sum of ten lacs, would not have been (sic.) made the divorce decree valid in the eyes of law”.”

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In the circumstances, we find that the learned trial Court has rightly ordered the amount of Rs.6.25 lacs be refunded to the appellant and in case she was not willing for grant of divorce.”

Consequently, accepting the appellant's contention that the respondent be called upon to restitute ₹6 lakhs, we remit the matter to the District Judge (Family Court), Ambala, to enable the appellant to file an appropriate application for restitution of the amount of ₹6 lakhs received by the respondent during proceedings under Section 13-B of the Act subject, however, to any defence that the respondent may raise in this regard.

The parties are directed to appear before the court of
District Judge (Family Court), Ambala on 21.03.2016.

(RAJIVE BHALLA)
JUDGE

(LISA GILL)
JUDGE

February 12, 2016
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