

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

FAO-M-19-2014

Decided on : 25.01.2016

Vikas Verma

.... Appellant

VERSUS

Harpreet Kaur

..... Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: **Mr.J.S.Cooner, Advocate, for the appellant.**

None for the appellant.

RAJIVE BHALLA, J. (ORAL)

The appellant is aggrieved by dismissal of a petition filed under Section 13B of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') for want of consent by the respondent-wife at the stage of second motion.

Counsel for the appellant submits that the respondent having filed a joint petition for grant of a decree of divorce by mutual consent, made a statement at first motion, accepted Rs.3 lacs as permanent alimony, had no right to withdraw her consent at the stage of second motion. The consent should, therefore, be inferred and even otherwise, the District Judge, Ludhiana, while dismissing the petition for want of consent, should have directed the respondent to return the amount of Rs.3 lacs.

No-one is present on behalf of the respondent.

We have heard counsel for the appellant, perused the impugned judgment but are not inclined to grant any relief to the appellant except to grant liberty to approach the District Judge, Ludhiana, by way of an appropriate application, for restitution of the amount of Rs.3 lacs, allegedly paid by the appellant to the respondent, as permanent alimony. A perusal of the facts reveals that parties filed a petition for grant of a divorce by mutual consent. The parties recorded statements in first motion and it is alleged that the respondent-wife has received an amount of Rs.3 lacs as permanent alimony. The respondent, however, withdrew her consent, compelling the District Judge, Ludhiana, to dismiss the petition. The appeal in these circumstances, would not be maintainable particularly in view of the fact that mutual consent cannot be inferred merely from the filing of a joint petition or making of statement at the stage of second motion. Section 13B of the Act grants six months' time to parties from the stage of first motion upto the stage of second motion, and then a total period of 18 months to enable parties to reconsider the matter.

Consequently, the appeal is dismissed but with liberty to the appellant to file an appropriate application before the District Judge, Ludhiana, praying for refund of the amount of Rs.3 lacs allegedly paid by him to the respondent-wife during proceedings under Section 13B of the Act subject to any defence that the respondent may raise. The application be decided within six months

from its filing.

[RAJIVE BHALLA]
JUDGE

25.01.2016
shamsher

[HARI PAL VERMA]
JUDGE