

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Sr. No.239

FAO-M-492-2015

Decided on : 11th January, 2016

Jaspreet Kaur Dhaliwal

.... Appellant

VERSUS

Kulwinder Singh

..... Respondent

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

Present: **Mr. Amaninder Singh Sekhon, Advocate**
for the appellant.

Mr. Gaurav Sharma, Advocate
for the respondent.

RAJIVE BHALLA, J. (Oral)

The appellant, Jaspreet Kaur Dhaliwal challenges, order dated 21.11.2015, passed by the Additional District and Sessions, Sri Muktsar Sahib, whereby a petition for grant of a decree of divorce by mutual consent, has been dismissed on the ground that Jaspreet Kaur did not put in appearance in person at the stage of second motion.

We have heard counsel for the parties, interacted with the father of the appellant and Kulwinder Singh, the respondent who was petitioner No. 1 in the petition filed under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act”) and perused the impugned order.

The parties filed a petition, under Section 13-B of the Act, for

dissolution of their marriage by mutual consent. The parties recorded statements at the stage of first motion. The appellant however made a statement through her attorney. The Trial Court entertained the petition under Section 13-B recorded statements at the stage of first motion, but at the stage of second motion dismissed the petition for want of personal appearance of Jaspreet Kaur.

A similar controversy came up for consideration in FAO No. 55 of 2015 'Kulwinder Kaur vs. Jaspreet Singh' decided on 16.10.2015, wherein after considering the question that has arisen in the present appeal, the order passed by the Trial Court dismissing the petition for grant of divorce by mutual consent for want of personal appearance of parties was set aside by holding as follows:-

'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'.

After holding as above as parties had already recorded their

statements in second motion the appeal was allowed, the order passed by the

trial Court was set aside and marriage between the parties was dissolved by grant of decree of divorce.

A perusal of the impugned order reveals that the Trial Court has dismissed the petition for want of the personal presence of the appellant through her father and general power of attorney was present. The trial court did not doubt the bonafides of the parties or legality of the prayer for dissolution of marriage. To, therefore, insist upon the personal presence of parties, particularly where parties admittedly reside abroad, would perpetuate injustice, wastage of time and money.

Consequently, the appeal is allowed, order dated 21.11.2015, is set aside and parties are directed to appear before the Additional District and Sessions Judge, Sri Muktsar Sahib on 17.02.2016, whether personally or through their attorneys for recording their statements in second motion. The Trial Court shall not insist upon the personal presence of the appellant.

The proceedings be concluded within two months of the aforesaid date.

(RAJIVE BHALLA)
JUDGE

January 11, 2016
 jyoti III

(LISA GILL)
JUDGE