

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

**FAO No.M-23 of 2016 (O&M)
Date of Decision: 27.01.2016**

Baldeep Kaur through her attorney Kulwinder Kaur
.....Appellant
Versus
Manav Uppal
....Respondent

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

Present: Mr. M.S.Atwal, Advocate for the appellant.

Mr. A.P.Kaushal, Advocate for the respondent.

RAJIVE BHALLA, J (ORAL)

Baldeep Kaur wife of Manav Uppal, challenges order dated 21.11.2015, recorded by the District Judge, Hoshiarpur, dismissing a petition for grant of divorce by mutual consent for want of territorial jurisdiction.

Counsel for both parties contend that the trial Court has not doubted the bonafides of the parties, the contents of the petition, statements made at first and second motion, but has dismissed the petition for want of relevant pleadings or material to prove that the appellant resided within the territorial jurisdiction of the District Judge, Hoshiarpur. A perusal of the pleadings in the joint petition reveal that the appellant has specifically averred that after the appellant and the respondent parted company at Delhi, the appellant began residing in, Village Mirjapur, VPO Gardhiwal, Tehsil Dasuya, District Hoshiarpur. The learned District Judge has overlooked these

averments. The appellant went abroad on a valid visa from 28.05.2014 to 30.07.2015, which has now been extended upto 31.07.2017.

Counsel for the parties pray that as there is no denial to the pleadings that the appellant resided in Village Mirjapur, VPO Gardhiwal, Tehsil Dasuya, District Hoshiarpur, before the filing of the petition, the appeal may be allowed, the impugned order may be set aside and marriage between the parties may be dissolved by grant of decree of divorce by mutual consent.

Counsel for the appellant has filed an affidavit of Baldeep Kaur-appellant, attested by a notary public, in Canada and an affidavit of Kulwinder Kaur, the appellant's power of attorney holder. The respondent, Manav Uppal has filed a separate affidavit in support of submissions made by his counsel.

We have heard counsel for the parties, perused the petition filed under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") and copies of statements, made at the stage of first and second motion.

The parties filed a petition under Section 13-B of the Act. A perusal of paragraph 5 of the petition reveals that the parties have specifically averred that the appellant returned to her paternal home on, 10.11.2013, in village Mirjapur, VPO Gardhiwal, Tehsil Dasuya, District Hoshiarpur

and began residing there. The village falls within District Hoshiarpur i.e. within the territorial jurisdiction of the District Judge, Hoshiarpur. The learned District Judge overlooked these uncontroverted averments and dismissed the petition for want of territorial jurisdiction. The learned District Judge, Hoshiarpur, also lost sight of para 13 of the petition where it is clearly recorded that petitioner No.1 (the appellant herein) is a resident of Village Mirjapur, VPO, Gardhiwal, Tehsil Dasuya, District Hoshiarpur. The averments in paragraphs 5 and 13 of the petition, filed under Section 13-B of the Act, leave no ambiguity that the appellant, was residing in District Hoshiarpur, after she parted ways with the respondent. Consequently, we set aside the impugned judgment and proceed to consider whether the parties should be granted a decree of divorce by mutual consent.

A perusal of averments in the petition, depositions at the stage of first and second motion, affidavits filed in Court today, reveal that the parties have taken a conscious decision that it is not possible for them to live together on account of temperamental differences that are so irreconcilable as to render impossible their residing together as husband and wife. The respondent is present in person whereas the appellant is represented through her mother, her general power of attorney holder. Thus, while setting aside the order passed by the District Judge, Hoshiarpur, we allow the

appeal, accept the prayer made in the petition and dissolve the marriage between the parties by mutual consent.

Decree sheet be drawn up accordingly.

[RAJIVE BHALLA]
JUDGE

27.01.2016
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[LISA GILL]
JUDGE