

C.R. No. 714 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 714 of 2017

DATE OF DECISION:02.05.2017

Amrinder Singh

.....Petitioner

Versus

Seerat Kaur

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Ankur Malik, Advocate
for the petitioner.

Mr. I.S. Saggu, Advocate
for the respondent.

DAYA CHAUDHARY, J.

The present revision petition has been filed for setting aside impugned order dated 26.10.2016 passed by District Judge, Family Court, Faridabad to the extent that the petitioner has been directed to be present in person at the time of recording second motion statement in mutual consent divorce petition No. HMA 1312/27.10.2016 filed under Section 13-B of the Hindu Marriage Act and for granting exemption from personal appearance and to allow Special Power of Attorney holder, namely, Sh. Bhagwan Singh to appear, act and make statement on behalf of the petitioner.

Briefly, the facts of the case, as made out in the present petition are that petitioner got married to respondent on 10.2.2013 according to Sikh rites and rituals. They remained together for sometime but thereafter they could not pull together in their married life. FIR No. 129 dated 7.6.2014 was registered at Police Station Faridabad NIT against the petitioner and his

parents. Subsequently, the dispute between the parties was amicably settled vide compromise deed dated 16.5.2016 with the intervention of the respectables of the Society and family members, wherein, it was mutually agreed that the respondent-wife will not insist the petitioner-husband to appear before the Court for making statement as the petitioner was residing in Australia and was unable to come to India. This condition was mentioned in para No. 7 of the compromise deed. Accordingly, the petitioner gave power of attorney to his uncle, namely, Bhagwan Singh. On the basis of compromise arrived at between the parties, the petitioner-husband approached this Court by way of filing Crl. Misc. No. M-26891 of 2016 for quashing of the FIR, which was allowed vide order dated 15.11.2016. Thereafter, a petition under Section 13-B of the Hindu Marriage Act for dissolution of marriage by way of mutual consent was filed by the petitioner-husband through his uncle, namely, Sh. Bhagwan Singh, being Special Power of Attorney holder. The statements of both the parties were recorded on 26.10.2016 but the trial Court directed the Special Power of Attorney holder to produce husband-petitioner in person at the time of recording of second motion statement on 2.5.2017. The petitioner-husband filed the present petition for setting aside impugned order dated 26.10.2016 partly, vide which, the petitioner was directed to remain present for making second motion statement in the divorce petition filed under Section 13-B of the Hindu Marriage Act.

Learned counsel for the petitioner contends that the matter has already been compromised between the parties and respondent-wife has no objection in case the second motion statement on behalf of the petitioner-husband is recorded through his attorney. The amount settled in the

compromise has already been paid to the respondent-wife still the petitioner has been asked to appear in person for recording of the statement of the second motion, whereas, statement of first motion has already been recorded. Learned counsel further contends that the petition has also been filed through Power of Attorney and the statement made by the Attorney is equally good as he has been authorized by the petitioner-husband to make statement on his behalf. Respondent-wife has also no objection in recording the statement of attorney holder.

Learned counsel for the respondent has not disputed filing of the petition under Section 13-B of the Hindu Marriage Act and also recording of the first motion statement. He has also not disputed the factum of grant of amount as per compromise arrived at between the parties. It is also not disputed that FIR No. 129 dated 7.6.2014 registered under Section 406,498-A IPC at Police Station Faridabad NIT has already been quashed by this Court on the basis of compromise arrived at between the parties.

Heard the arguments advanced by learned counsel for the parties and have also gone through the impugned order and other documents available on file.

Admittedly, the petition under Section 13-B of the Hindu Marriage Act for dissolution of marriage has been filed with mutual consent by the petitioner-husband through Special Power of Attorney, namely, Sh. Bhagwan Singh. As per Special Power of Attorney, the Power of Attorney holder has been authorized to file/pursue/defend all cases relating to matrimonial dispute with his wife pending before the Court at Faridabad or to be filed in the Court/Tribunal/Commission. He has been authorized to compromise/compound the cases in respect of said matrimonial dispute

pending before any Court in India or Punjab and Haryana High Court at Chandigarh and Supreme Court of India. The Special Power of Attorney was also authorized to make statement on behalf of the petitioner-husband and to submit affidavit, statement before any Court.

Learned counsel for the respondent-wife has no objection in case statement of Special Power of Attorney holder is recorded in the second motion as money has already been paid to her. In para No. 7 of the compromise, it has specifically been mentioned that the petition under Section 13-B of the Hindu Marriage Act will be filed through Sh. Bhagwan Singh being attorney holder of petitioner-husband and the statement will be made by him on his behalf and the respondent-wife will not insist the petitioner-husband to appear before the Court for making such statement.

The issue which arises for consideration before this court is as to whether it is mandatory for the parties to appear in person in court at the time of filing of petition for divorce by way of mutual consent and also at the time of second motion or the attorney can be authorised to appear ?

The High Court of Delhi in the case of **Neelima Chopra Vs. Anil Chopra** 1987 (1) HLR 187 while referring to the provisions of Section 13-B of the Act and considering the issue of appearance of attorney in such cases, opined as under:-

“As I read it, if the conditions mentioned in Section 13-B are satisfied then the Court has no option but to grant a decree of divorce. It is no doubt true that subsection (2) of section 13-B requires the Court being satisfied “after hearing the parties and after making such inquiry as it thinks fit”. What is the satisfaction which is to be arrived at by the courts is provided

by the said provision itself. The satisfaction which has to be arrived at by the court has to be that firstly a marriage had been solemnized and secondly that the averments in the petition are true.

For arriving at such a satisfaction, I fail to understand the need for the parties to appear in person. In order to arrive at this satisfaction it is open to the parties to file affidavits or authorise someone to make statement testifying to the correctness of the contents of the petition. In both the parties, by way of affidavits or through counsel, state that they were married, and are able to produce proof of the marriage, and that they have been living separately and have not been able to live together for the prescribed period, then I see no reason as to why the court should not record its satisfaction as envisaged by Section 13-B (2) and to pass a decree for divorce thereon.

The learned counsel for the petitioner has drawn my attention to the decision of the Calcutta High Court in the case of *Annalie Prashad v. Romesh Proshad*, AIR 1968 Calcutta 48. That undoubtedly was a case under the Special Marriage Act but the provisions of the two Acts are similar. In that case also the trial court had desired the personal presence of the parties but the Calcutta High Court observed that the same was not necessary. I am in respectful agreement with the aforesaid decision.”

A Division Bench of Andhra Pradesh High Court in ***Padmakiran Rao (Mrs.) Vs. B. Venkateramana Rao*** 1996 (2) HLR 271

case while dealing with the similar issue held as under :-

“Relying on the wording “after hearing the parties” in sub-section (2) of Section 13-B, the learned Subordinate Judge took the view that both the parties to the marriage should necessarily be present in the Court for examination and the filing of affidavit will not be a substitute for that requirement. The learned Judge observed that unless the parties are personally present, it would be difficult for the Court to assess whether they have changed their mind since the date of filing the petition. We do not think that this is a correct view to be taken. 'Hearing' does not necessarily mean that both parties have to be examined. The word 'hearing' is often used in a broad sense which need not always mean personal hearing. In any case, the evidence of one of the parties, i.e., the appellant herein was recorded by the Court. Thus, even if the word 'hearing' is construed in a literal sense that requirement must be deemed to have been satisfied in the instant case in view of the examination of the appellant. On the husband's side there is evidence in the form of an affidavit which can be legitimately taken into account in view of Order XIX Rule 1 CPC. It is not as if the affidavit has been doubted or the other party wanted to cross examine the deponent of the affidavit. When there are no suspicious circumstances or any particular reason to think that the averments in the affidavit may not be true, there is absolutely no reason why the Court should not act on the affidavit filed by one of the parties. The learned Judge fell into

error of law in observing that he cannot look into the affidavit at all. There is also a valid reason for nonattendance of the respondent in the Court. In the circumstances, the order of the Lower Court is set aside and the appeal is allowed. We declare that the marriage between the parties shall stand dissolved with effect from the date of this judgment and a decree for divorce be passed. We make no order as to costs.”

Section 21 of the Hindu Marriage Act provides that as far as may be, the proceedings under the Act are to be regulated by the CPC. Order 3 of CPC provides for appearance of the parties through the recognised agent or a pleader. The recognised agent may be a person holding power of attorney authorising him to make and do such appearances, applications and acts on behalf of such parties.

Section 23 (1) (bb) of the Act provides that in any proceedings under the Act whether defended or not, the court has to be satisfied specially in the cases where the divorce is sought on the ground of mutual consent, that such consent has not been obtained by force, fraud or undue influence.

In the present case, the dispute between the parties has been settled with certain terms and conditions. The respondent-wife has also no objection in case the statement of Special Power of Attorney Holder of petitioner-husband is recorded in the second motion. Moreover, money has already been paid to the respondent-wife. The presence of the petitioner-husband is not mandatory in the proceedings for divorce by way of mutual consent. In case the petitioner-husband is represented through power of attorney who is none else but a close relative of the petitioner-husband, the

genuineness of the statements, pleas and proceedings cannot be doubted. It is not that the satisfaction can only be recorded when the parties are present in person. There can be a case where even in the presence of the parties, the Court may not feel satisfied about their bona fides or consent. In the present case, the first motion statement on behalf of petitioner-husband has already been recorded and it is only at the stage of recording of second motion statement, the presence of petitioner-husband has been sought by the trial Court without recording any reason or satisfaction of the Court.

In view of the above, the present petition is allowed and the condition of appearance of petitioner-husband in person as mentioned in impugned order dated 26.10.2016 is set aside. The trial Court is directed to allow the Special Power of Attorney Holder, namely, Sh. Bhagwan Singh to make second motion statement on behalf of the petitioner-husband on any date to be given by the trial Court.

May 02, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes