

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-M-133-2008

Date of Decision: 30.5.2017

Sartaj Singh

....Appellant.

Versus

Anita

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

PRESENT: Mr. IPS Bains, Advocate for the appellant.

Mr. Munish Behl, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Through the instant appeal, the appellant-husband has challenged the judgment and decree dated 24.4.2008 passed by the Additional District Judge, Chandigarh, whereby the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (In short, “the Act”) for dissolution of marriage by a decree of divorce, was dismissed.

2. The marriage between the parties was solemnized on 18.10.1996 at Chandigarh. After marriage, the parties lived together as husband and wife at Chandigarh and cohabited as such. From the said wedlock, a female child was born on 20.8.1997. However, some differences arose between the parties which led to lodging of FIR No.8 dated 9.1.2006, under Sections 406/498-A of the Indian Penal Code, Police Station, Sector 3, Chandigarh. Thereafter, the appellant filed a petition

under Section 13 of the Act for dissolution of marriage between the

parties by a decree of divorce. The said petition was contested by the respondent by filing a written statement. Besides raising various preliminary objections, the averments made in the petition were controverted and a prayer for dismissal of the same was made. The trial court on appreciation of oral as well as documentary evidence led by the parties dismissed the petition filed under Section 13 of the Act for dissolution of marriage between the parties by a decree of divorce vide judgment and decree dated 24.4.2008. Hence, the present appeal by the husband.

3. During the pendency of the appeal, the parties have amicably resolved their differences. As per the terms and conditions entered between the parties, joint petition bearing CM-22093-CII-2016 was filed for permission to amend the petition under Section 13 of the Act and to convert the same into a petition under Section 13B of the Act for grant of a decree of divorce by mutual consent. The said application was allowed by this Court vide order dated 7.11.2016 and the petition filed under Section 13 of the Act was ordered to be converted into a petition under Section 13B of the Act.

4. Both the parties made their respective statements on 7.11.2016 as first motion for dissolution of the marriage by mutual consent under Section 13B of the Act. The case was adjourned on the said date for 10.5.2017 for recording statements of second motion of the parties as required under Section 13B of the Act and thereafter, the matter was adjourned to 30.5.2017.

5. Appellant-Sartaj Singh and respondent-Anita are present in Court today. They have been identified by their respective counsel. The

second motion statements of the parties i.e. appellant-husband and respondent-wife have been recorded on solemn affirmation. As per the settlement, the appellant-husband had paid a total sum of ₹ 15 lakhs (₹ 7.5 lakhs at the time of first motion and ₹ 7.5 at the time of second motion) to the respondent-wife on account of permanent alimony and for settlement of other claims and also for the maintenance of the child as full and final settlement. The respondent-wife had accepted the said amount of ₹ 15 lakhs. Both the parties have agreed for divorce by way of mutual consent under Section 13B of the Act. They have confirmed that a joint petition under Section 13B of the Act has been presented by them for grant of decree of divorce by mutual consent. The parties have stated that they are agreed to get the marriage dissolved by mutual consent in terms of joint petition filed under Section 13B of the Act.

6. Section 13-B of the Act reads thus:

“13B. Divorce by mutual consent.-(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, (68 of 1976) on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier

than six months after the date of the presentation of the petition referred to in sub- section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

7. A plain reading of sub-section (1) shows that the parties to the marriage wherever agree by mutual consent that the marriage should be dissolved by a decree of divorce on the ground that they have been living separately for a period of one year or more, both the parties may present a petition for divorce to the District Court. On presentation of such petition, statement by way of first motion would be recorded. Under sub-section (2), second motion would be required to be made which should be after six months from the date of presentation of the petition referred in sub-section (1) and not later than eighteen months from the date of first motion where the petition has not been withdrawn. The Court, on being satisfied after hearing the parties pass a decree of divorce to be effective from the date of the decree.

8. The Apex Court in **Hitesh Bhatnagar Vs. Deepa Bhatnagar, AIR 2011 (SC) 1637**, explained the scope of Section 13-B of the Act as under:-

“14) The language employed in Section 13B(2) of the Act is clear. The Court is bound to pass a decree of

divorce declaring the marriage of the parties before it to be dissolved with effect from the date of the decree, if the following conditions are met:

a. A second motion of both the parties is made not before 6 months from the date of filing of the petition as required under subsection (1) and not later than 18 months;

b. After hearing the parties and making such inquiry as it thinks fit, the Court is satisfied that the averments in the petition are true; and

c. The petition is not withdrawn by either party at any time before passing the decree;

15) In other words, if the second motion is not made within the period of 18 months, then the Court is not bound to pass a decree of divorce by mutual consent. Besides, from the language of the Section, as well as the settled law, it is clear that one of the parties may withdraw their consent at any time before the passing of the decree. The most important requirement for a grant of a divorce by mutual consent is free consent of both the parties. In other words, unless there is a complete agreement between husband and wife for the dissolution of the marriage and unless the Court is completely satisfied, it cannot grant a decree for divorce by mutual consent. Otherwise, in our view, the expression 'divorce by mutual consent' would be otiose."

9. In view of above and after perusing the statements made by the parties in Court on 7.11.2016 (first motion) and today i.e. 30.5.2017 (second motion), we are satisfied that the averments made in the petition are true and requirements of Section 13B of the Act are fulfilled and the parties be granted divorce by way of mutual consent. Accordingly, joint petition (CM-22094-CII-2016) which is supported by affidavits of the appellant as well as the respondent, is allowed. Consequently, a decree of divorce under Section 13B of the Act is passed effective from today by modifying the judgment and decree dated 24.4.2008 passed by the trial Court.

10. It is further observed that the parties shall remain bound by the statements and terms of the joint petition filed under Section 13B of the Act. However, in case any of the parties resiles from the statements or terms of the joint petition under Section 13B of the Act, it shall be open to the other party to avail any remedy in accordance with law.

11. In view of above, the present appeal stands disposed of.

(AJAY KUMAR MITTAL)
JUDGE

May 30, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No