

FAO-5999-2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**FAO-5999-2017 (O&M).
Decided on: September 14, 2017.**

Sanjeev Kumar

.. Petitioner

VERSUS

Smt.Neesha Devi

.. Respondent

*** * ***

**CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI
HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH**

*** * ***

**PRESENT Mr.Naveen Sharma, Advocate,
for the petitioner.**

M.M.S. BEDI, J. (ORAL)

Husband has preferred the present first appeal against order dated 1.8.2015 passed in proceedings under Section 13-B of the Hindu Marriage Act. The order dismissing the petition under Section 13-B of the Hindu Marriage Act, passed by the District Judge, Family Court, Ambala, reads as under: -

*“Present Shri Yadvinder Gupta, counsel for
applicant/petitioner No.1.
None for petitioner No.2.*

Co-petitioner Sanjeev is not interested to get his second motion statement recorded as he is not appearing in the Court for the last several dates, whereas, co-petitioner Neesha has moved an application for withdrawing the consent,. Hence, her application stands allowed. Accordingly, consent of petitioner Neesha is presumed to have been withdrawn by her. Hence, there is lack of common consent necessary for passing the decree of divorce by way of mutual consent under Section 13-B of the Hindu Marriage Act. Therefore, keeping in view the facts and circumstances of the case, I dismiss this petition. File be consigned to the record room after due compliance.

*Announced in open Court
Dated: 01.08.2015*

*(Dr.Abdul Majid)
Addl. District & Sessions Judge,
District Judge (Family Court),
Ambala.”*

The perusal of above said order indicates that the appellant himself had evaded appearance at second motion statement stage as is observed by the Family Court. He opted not to appear in the Court on several dates. In said circumstances, the co-petitioner/wife had withdrawn her consent.

The appellant in above said circumstances has sought the following reliefs in the appeal: -

“In the light of the aforesaid grounds and circumstances as mentioned hereinabove, the appellant most humbly prays that this Hon'ble Commission may graciously be pleased to”

(i)Set aside the impugned order/judgment dated

- 1.8.2015 passed by the learned Addl. District Judge (Family Court), Ambala and allow the present appeal filed by the appellant; And*
- (ii) Direct to restore the joint petition for dissolution of marriage by a decree of Divorce by way of Mutual Consent under Section 13-B of the Hindu Marriage Act, 1955, filed by appellant/ petitioner No.2 and respondent/ petitioner No.1 at Ambala Courts;*
- (iii) Exempt filing of certified copies of Annexure A-3 and A-4, as the same are not readily available with the appellant;*
- (iv) Pass such other and further order or orders as may deem fit and proper in the facts and circumstances of the present case.”*

We have considered the appeal in context to the above said prayer and are of the considered opinion that this appeal is not maintainable against the order dated 1.8.2015. The above said reliefs cannot be granted to the appellant in peculiar circumstances of this case. The above said reliefs could have been prayed for by approaching the Court below as the impugned order dated 1.8.2015, appears to have been passed on account of non-appearance of the appellant before the Court below.

At this stage, counsel for the appellant has submitted that the matter be referred to the Mediation and Conciliation Centre of Punjab and Haryana High Court. This relief can always be sought for by the appellant by approaching the Family Court.

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The appeal is dismissed without prejudice to the other legal rights of the appellant. It will also be open to the appellant to file a fresh petition under Section 13 of the Hindu Marriage Act. The misc. application for condonation of delay in filing the appeal, in view of the above conclusion, also stands dismissed.

(M.M.S. BEDI)
JUDGE

September 14, 2017.
raj arora

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No