

FAO-8191-2017 (O&M)

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

FAO-8191-2017 (O&M)

Date of Decision: 15th December, 2017

Rajbir

...Appellant

Versus

Sushma

...Respondent

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

Present: Mr. R.S. Mamli, Advocate
for the applicant-appellant.

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

CM-26995-CII-2017

Application is allowed, subject to all just exceptions.

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The appellant along with respondent-wife had filed a joint petition under Section 13-B of the Hindu Marriage Act (hereinafter referred to as 'Act') in the Court of District Judge (Family Court), Bhiwani. The respondent-wife had appeared before the District Judge (Family Court), Bhiwani, on 28.11.2016 and got her statement recorded at first motion. The statement of the appellant was also recorded on the said date. Thereafter, the case was adjourned for 30.05.2017 for recording the statements of the parties at second motion. The respondent-wife had opted not to appear on the said date and next few dates fixed by the lower Court. Ultimately, the lower Court, vide impugned order dated 18.11.2017, dismissed the petition filed by the parties under Section 13-B of the Act, refusing the grant of

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decree of divorce by mutual consent.

Grievance of the appellant is that the respondent had received a sum of ₹ 9,00,000/- and had to receive the balance amount of ₹ 6,50,000/- at the time of second motion, as agreed to between the parties, for dissolution of the marriage under Section 13-B of the Act. She neither appeared to receive the balance amount nor refunded the amount received.

Counsel for the appellant has vehemently contended that in the light of the judgment in **Deepak Singh Vs. Pooja 2016 (2) R.C.R. (Civil) 742**, the appellant is at least entitled to the restitution of the amount of ₹ 9,00,000/- already paid to the respondent-wife. He has also argued that a direction may be given to the lower Court to grant decree of divorce in view of the conduct of the respondent.

We have considered the facts and circumstances of the case and express our inability to grant decree of divorce under Section 13-B of the Act on account of respondent having opted not to appear before the lower Court at the time of recording the statement at second motion for giving consent to dissolve the marriage under Section 13-B of the Act. So far as the amount of ₹ 9,00,000/- is concerned, which is alleged to have already been paid to the respondent-wife, it is always open to the appellant to file an appropriate application before the District Judge (Family Court), Bhiwani, for restitution of the said amount.

Taking into consideration the judgment of *Deepak Singh's* case (supra), the only relief which can be granted to the appellant is that the application of the appellant would be considered and decided in accordance

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with law in case the same is filed within a period of 15 days. The marriage between the parties cannot be dissolved by decree of divorce by mutual consent by this Court in exercise of appellate jurisdiction. However, it will be open to the appellant-husband to seek divorce in accordance with the due process of law. The conduct of the respondent may also be relied upon by the appellant as one of the grounds for seeking divorce claiming that the non-refunding of the said amount would fall within the parameters of Section 13 of the Act.

Disposed of in the above terms.

In case the application is filed by the appellant before the lower Court within a period of 15 days, the lower Court shall decide the same expeditiously.

(M.M.S. BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

15th December, 2017
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No