

FAO-M-190-2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**FAO-M-190-2017 (O&M).
Decided on: August 21, 2017.**

Paramjit Kaur

.. Appellant

VERSUS

Harwant Singh

.. Respondent

*** * ***

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

*** * ***

**PRESENT Mr.G.S.Sirphikhi, Advocate,
for the appellant.**

**Mr.Vishal Sodhi, Advocate,
for the respondent.**

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

Present appeal has been preferred under Section 28 of the Hindu Marriage Act against the order dated 14.7.2017, passed by the Additional Civil Judge (Sr. Divn.), Batala, dismissing the petition under Section 13-B of the Hindu Marriage Act, on account of non-appearance of the appellant-wife on 30.5.2017 when the statement of both the parties were required to be recorded after expiry of six months. The Court had exercised its power under Order 17 Rule 1 CPC and adjourned the matter for recording the statement of the petitioner, in the interest of justice, till 14.7.2017. It is apparent that on 14.7.2017 respondent-husband along with

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his counsel as well as counsel for appellant-wife were present and the petition had not been withdrawn by any of the parties. The Court opted to arrive at a presumption that the appellant-wife was not interested to take divorce from the respondent-husband and that there was no mutual consent between the parties for obtaining divorce from each other and dismissed the petition.

Notice of motion to the respondent.

At this stage, notice has been accepted by respondent-husband present in the Court along with Mr. Vishal Sodhi, Advocate.

Appellant-wife present in the Court has stated that she did not have any intention to withdraw the petition but she was unable to appear in the Court on 14.7.2017 as there was call of Punjab Bandh and she being a lady was under bona fide belief that it was not safe to travel to the Court in Batala as such, she failed to appear.

Since both the parties have stated that none of them wanted to withdraw the petition and the Court had jurisdiction to extend the period till the expiry of 18 months from the date of first motion under Section 13-B (2) of the Hindu Marriage Act, we are of the opinion that the Court should not have hurriedly disposed of the petition on presumptions without recording the statement of the parties. The Court had an authority under proviso to Order 17 Rule 1 CPC, to grant one more opportunity to the parties to get their statements recorded at second motion stage.

In view of said circumstances, order dated 14.7.2017, is apparently an illegal order contrary to the provisions of law having been passed on unwarranted presumptions.

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Counsel for the respondent-husband has submitted that he has got no objection in case order dated 14.7.2017, is set aside and an opportunity is given to the parties to get their statements recorded at second motion stage.

We have considered the facts and circumstances of the case and are of the opinion that as the period of 18 months under Section 13-B (2) of the Hindu Marriage Act, has not expired till date and none of the parties have expressed their desire to withdraw the petition, order dated 14.7.2017 has to be set aside.

The petition is allowed. Order dated 14.7.2017 is hereby set aside and a direction is issued to the lower Court to take up the case for further proceedings from the stage at which it existed on 14.7.2017 and give an opportunity to both the parties to get their statements recorded. Both the parties present in the Court are directed to appear before the lower Court on 16.9.2017 and get their statements recorded regarding their consent for divorce by mutual consent. If for any reason, the Court is not able to record the statement on 16.9.2017, it will be open to the court to adjourn the matter for a date convenient to the parties and dispose of the matter in accordance with law by taking up the proceedings from the stage as it existed on 14.7.2017.

(M.M.S. BEDI)

JUDGE

August 21, 2017.

raj arora

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No