

FAO-M-247-2017 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO-M-247-2017 (O&M).
Decided on: October 27, 2017.**

Vijay Kumar

.. Appellant

VERSUS

Mandeep Kaur

.. Respondent

*** * ***

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

*** * ***

**PRESENT Mr.Onkar Rai, Advocate,
for the appellant.**

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

Petitioner along with his wife, pursuant to a compromise dated 21.8.2016 (Annexure A1), had filed a petition under Section 13-B of the Hindu Marriage Act, for dissolution of marriage on 26.8.2016. The parties got their statements recorded on 26.8.2016. Six months expired on 26.2.2017 but both, the petitioner as well as the respondent, did not appear before the Court of Additional Civil Judge, (Sr. Divn.), Dasuya, (exercising the powers of District Judge) on 28.2.2017.

On 28.2.2017, Sh.Avtar Rai Kainth, Advocate, on behalf of both the petitioners was present but on account of non-appearance of appellant as well as his wife respondent Mandeep Kaur, the above said Court arrived at a conclusion that the parties are not interested to get the

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decree of divorce by way of mutual consent and dismissed the application under Section 13-B of the Hindu Marriage Act.

The husband has preferred the present appeal before this Court on the ground that as per the terms of settlement, a sum of Rs.2 lac had been paid on first motion and the appellant was ready to pay balance sum of Rs.2 lac on 28.2.2017.

Counsel for the appellant has submitted that on account of wrong date of hearing having been given to the appellant, he could not appear on 28.2.2017. He has also levelled allegations that counsel before lower Court was closely related to Mandeep Kaur respondent and did not inform about the proceedings on 28.2.2017. However, counsel for the appellant admits that on 1.3.2017, the appellant came to know about the dismissal of the petition under Section 13-B of the Hindu Marriage Act.

We have heard the counsel for the appellant and are not satisfied with the bona fide of the appellant as it appears that he has not been able to establish that he was ready to comply with the obligations arising out of settlement i.e. to pay balance sum of Rs.2 lac after expiry of six months at the time of second motion statement.

Be that as it may, the grievance of the appellant is also that a fraud has been played on the Court as well as on him despite his clear intentions to comply with the terms of settlement as he has already paid a sum of Rs.2 lac to the respondent.

We have taken into consideration the facts and circumstances of the present case and are of the opinion that as per the provisions of Section 13-B (2) of the Hindu Marriage Act, the Court

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exercising powers under Section 13-B of the Hindu Marriage Act, can defer the proceedings till expiry of 18 months from the date of presentation of petition. Even the Court has got an authority under provisions of Order 17 Rule 1 CPC, to grant adjournment for hearing of case for reasons to be recorded in writing. The said power as per the proviso of Order 17 Rule 1 CPC, can be exercised upto a limit of three times during the course of hearing. In the present case, as alleged by the appellant, the counsel did not make any request for adjournment to enable the parties to appear in the Court for second motion statement within the period of 18 months as per Section 13-B (2) of the Hindu Marriage Act, by virtue of which the parties are required to be heard on expiry of six months or before expiry of 18 months from the date of presentation of petition. Since it is claimed that a fraud has been played on the Court by not disclosing the true facts before the Court by giving wrong date to the appellant with mala fide intention as per the judgment of Hon'ble the Supreme Court in *Indian Bank Vs. M/s Satyam Fibres ((India) Private Limited, AIR 1996 SC 2592* and another judgment cited as *Sarabjit Singh Vs. Gurpal Kaur, 2013 (2) RCR (Civil) 125*, the remedy available to the appellant is to move an application before the lower Court which had passed order dated 28.2.2017. The Hon'ble Apex Court has held that in above said circumstances, the courts have got inherent jurisdiction even under Section 151 CPC, to recall its judgment or order if it is obtained by playing fraud on Court.

This appeal is held being not maintainable.

Since the period of 18 months till date has not expired

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and the Court has got an authority under Section 13-B of the Hindu Marriage Act, to hear the parties before expiry of 18 months from the date of presentation of the petition, it is ordered that in case an application for recalling the order dated 28.2.2017, is filed within a period of one week, the same shall be entertained and decided in accordance with law by the lower Court taking into consideration the pleas taken in the application. In case of any such application being filed, the endeavour shall be made by the Court below to decide the application and finalise the proceedings under Section 13-B of the Hindu Marriage Act, prior to the expiry of 18 months from the date of presentation of the petition i.e. by 25.2.2018.

Disposed of with above observations.

(M.M.S. BEDI)
JUDGE

October 27, 2017.
raj arora

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No