

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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FAO-M-321-2017

Date of decision: 22.12.2017

Rupinder Kaur

...APPELLANT

VERSUS

Harmanpreet Singh Randhawa

....RESPONDENT

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

Present: Mr. K.S.Kahlon, Advocate,
for the appellant.

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

A joint petition filed under Section 13-B of the Hindu Marriage Act filed by the appellant and the respondent has been dismissed by the Additional District Judge, Gurdaspur on the following grounds:

- (1) The power of attorney holders on behalf of both the parties did not satisfy the Court that from which date the parties had been residing separately from each other;
- (2) The power of attorney holders did not satisfy the Court regarding maintenance/alimony having been paid by the husband to the wife;
- (3) No document was produced on record to show that the parties are permanent residents of Sydney, Australia;

(4) The photocopies of the power of attorney had only been placed on record;

(5) Both the parties were residing in Australia; and

(6) there was no ground to waive of the statutory period of six months.

Counsel for the appellant has submitted that at present, the appellant-wife is present in India and that she can appear in the Court and state that she has waived of her right of any alimony and that there has been her free consent for obtaining the decree of divorce under Section 13-B of the Hindu Marriage Act. He has further submitted that had the parties been given an opportunity of appearance before the Court through video conferencing, they could have expressed their intention to obtain decree of divorce and could have satisfied the Court that the power of attorney had actually been given by them to their respective parents. The statements could have been recorded on video conferencing as per the High Court Rules and Orders, through the High Commissioner.

We have considered that facts and circumstances of the case and are of the opinion that as the consenting divorce has been refused on the grounds mentioned herein above, there is no bar for the parties to file a fresh petition under Section 13-B of the Hindu Marriage Act and satisfy the Court that circumstances exist for dissolution of marriage by decree of divorce under Section 13-B of the Hindu Marriage Act or that as per the law laid down in the case of **Amardeep Singh vs. Harveen Kaur**, 2017 (4) RCR (Civil) 608, there were circumstances for waiving of the statutory period of six months. The bar of *res judicata* will not be applicable in above-said circumstances in case the parties prefer to file a fresh petition under Section

13-B of the Hindu Marriage Act. The appellant-wife Rupinder Kaur, who is stated to be present in India, may herself sign the petition and appear before the Court or to make the statement during her stay in India.

Disposed of with above observations.

(M.M.S.BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

December 22, 2017
pj

Whether speaking/reasoned:	<i>Yes/No</i>
Whether Reportable:	<i>Yes/No</i>