

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

CR-2693-2017 (O&M)

Date of decision : 14.05.2018

Simrat Kaur

..... Petitioner

Versus

Jasbir Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Manish Kumar Singla, Advocate for the petitioner.
Mr. Brij Mohan Sharma, Advocate for
Mr. S.S. Sarwara, Advocate for respondent.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 16.7.2016, passed by learned Additional Civil Judge (Senior Division), Rajpura vide which an application dated 14/16.9.2015 filed by respondent-husband during the pendency of the proceedings under Section 13-B of the Hindu Marriage Act, 1955, wife-petitioner No. 1 was directed to return the amount she has received from petitioner No. 2-husband within one month, failing which Jasbir Singh-petitioner No. 2 would be entitled to recover the same by due process of law.

The facts of the case are that a petition under section 13-B of the Hindu Marriage Act, 1955 was filed by Simrat Kaur-petitioner No. 1 and Jasbir Singh-petitioner No. 2 on 3.3.2015. At first motion, statements of both the parties were recorded.

In the petition, it was alleged that parties have arrived at a compromise on 18.2.2015. According to which, the disputes between the parties have been settled.

It comes out that before the second motion, petitioner moved an application denying the compromise and to withdraw the petition for divorce by mutual consent. Thereafter, husband-petitioner No. 2 filed an application for taking legal action against petitioner No. 1-Simrat Kaur and for recovery of Rs. 3,00 lacs along with gold ornaments of seven tola.

Learned counsel for the petitioner submits that after the first motion, petitioner No. 1 Simrat Kaur is not appearing. It was further mentioned that an agreement dated 18.2.2015 had taken place between the parties under which Rs. 1.00 lac was paid to the wife-Simrat Kaur along with seven tola gold ornaments. On the application, the Court passed the aforesaid impugned order dated 16.7.2016 while noticing the law laid down by this Court in **Deepak Singh versus Pooja 2016 (2) CCC-065 (P&H)** and **Sukhdeep Kaur versus Ravinder Pal Singh, 2014 (3) CCC-807.**

I am of the view that the view taken by the learned trial Court is wholly erroneous. In this case, the agreement had taken place before the filing of the divorce petition and when the said agreement is alleged by one party and denied by other party, the Court could not straightaway order the refund of money by assuming that money received by the wife. In the proceedings initiated under Section 13-B of the Hindu Marriage Act, 1955 any of the parties can withdraw the consent at any time.

In the present case, wife withdrew the consent for mutual divorce before the second motion. Consequently, if the husband claims that

there was some compromise and some payments were made, it is for him to prove the said compromise and seek recovery of the said amount by instituting appropriate proceedings i.e., a civil suit. The position would have been different, if during the proceedings before the Court something is paid to the wife and the same is recorded in the orders and on the second motion she refuses to make the second statement. Therefore, it is not a case of restitution rather a question of fact as to whether the facts stated in the agreement are correct or not and whether the agreement was voluntarily executed or not?

It being so, the impugned order dated 16.7.2016, passed by learned Additional Civil Judge (Senior Division), Rajpura is not sustainable in the eyes of law and is hereby set aside to the extent it has ordered the petitioner No. 1 to refund the money received by her in terms of the agreement.

Consequently, present revision petition is allowed.

(KULDIP SINGH)
JUDGE

14.05.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No