

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M-459 of 2016 (O&M)

Date of Decision: February 14, 2018

Pooja Mittal

.....Appellant

Vs.

Vinay Mittal

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE GURVINDER SINGH GILL.

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Present: Mr. Satyavir Singh Yadav, Advocate for the appellant.

Mr. Namit Khurana, Advocate for the respondent.

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M.M.S. BEDI, J.

Appellant wife has invoked the jurisdiction of this Court under Section 28 of the Hindu Marriage Act, for short 'the Act', aggrieved by order dated November 25, 2016 passed by District Judge, Yamuna Nagar, directing the appellant wife to refund a sum of Rs.12 lacs to the respondent/ husband on account of the appellant wife having opted to avoid her appearance at the stage of second motion in proceedings under Section 13-B of the Act.

Brief facts relevant for the decision of the present appeal are that the appellant and the respondent had filed a petition under Section 13 B of the Act on July 16, 2015 for divorce by mutual consent. The respondent-

husband had agreed to pay a sum of Rs.42 lacs to the appellant towards expenses of marriage, dowry articles besides future and past maintenance. He had paid a sum of Rs.12 lacs at the time of statement of the first motion and remaining amount of Rs.30 lacs was to be paid at the time of second motion. On January 19, 2016 when the matter was fixed for recording the statement at second motion, the appellant wife made a statement that she did not want to get divorce and wanted to reside with the respondent. This was followed by the statement made by the respondent that since she had withdrawn her consent, the respondent also withdraws the petition reserving his right to take back the amount of Rs.12 lacs which has been paid by him towards part payment of the settled amount. The petition under Section 13 B of the Act was dismissed, followed by an application under Section 144 CPC filed by the respondent for directing the appellant to return the sum of Rs.12 lacs which had been received by her in proceedings under Section 13 B of the Act along with interest.

The District Judge in the exercise of powers under Section 144 of CPC ordered by way of restitution the refund the sum of Rs.12 lacs with an objective to place the parties in a position which they would have occupied but for the order of disposal of the proceedings under Section 13 B of the Act.

Appellant Pooja Mittal wife has come in appeal against the order of refund of the money. When the appeal came up for hearing on December 22, 2016, it was observed that there was no merit in the appeal but with an objective to settle the matter between the parties regarding the return of the money, the appeal had been entertained.

The appellant appeared in this Court on August 1, 2017 and explained the circumstances to the Court that she was unable to return the money and that the money paid to her be adjusted towards the future maintenance amount for the minor and herself. She furnished an affidavit to the effect that she had been maintaining herself w.e.f. June 2012 in addition to bringing up the minor son alone and had been paying fee of the advocates and other litigation expenses in more than 11 cases pending between the parties. The child is not maintaining good health as such she had to incur expenses on his medical treatment in addition to expenditure on medicines and other activities as such she expressed her inability to return the amount to the respondent. She claimed that amount of Rs.12 lacs received by her on July 16, 2015 was the amount of her past and future maintenance including cost of her dowry articles. She further deposed that in case she is required to pay any amount to the respondent, the same may be adjusted towards future maintenance amount for the minor child and her maintenance as till date only a sum of Rs.20000/- has been paid as maintenance expenses by the respondent-husband.

As mentioned hereinabove, the appeal was held to be without merit on the very first date of hearing.

Counsel for the appellant had made an attempt to press for the adjudication of the appeal on merits claiming that the appellant has got a right to file an appeal against any order passed by the matrimonial Court under the Family Courts Act. The validity of the impugned order has been challenged on the ground that the lower Court did not have power under Section 144 C.P.C. to order refund of the amount of Rs.12 lacs and that the

sum of Rs.12 lacs cannot be recovered on account of the circumstances explained by the wife.

Without expression of any opinion on maintainability of the present appeal under the Family Courts Act, we have considered the provisions of Section 144 CPC which reads as follows:-

“144. Application for restitution. -- (1) Where and in so far as a decree or an order is varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order shall, on the application of any party entitled in any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied, reversed, set aside or modified; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and *mesne* profits, which are properly consequential on such variation, reversal, setting aside or modification of the decree or order.

Explanation.-- For the purposes of sub-section (1) the expressions “Court which passed the decree or order shall be deemed to include.—

(a) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(b) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(c) where the Court of first instance has ceased to exist or has ceased to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).”

A perusal of the above said provision indicates that a Civil Court has got jurisdiction to cause restitution to place the parties in a position which they would have occupied but for an order passed by the Court. The jurisdiction to make restitution is otherwise inherent in every Court and is to be exercised whenever interest of justice demands so. The above said provision came up for consideration in similar circumstances before a Division Bench of this Court in **Sukhdeep Kaur Vs. Ravinder Pal Singh**, 2014 (3) PLR 514 in which an order passed for refund of the amount received in proceedings under Section 13 B of the Act was upheld when the

wife was not willing for the grant of divorce by making a statement in the Court.

We have considered the contention of counsel for the appellant that the Hindu Marriage Act being an independent Act will not be governed by the provisions of CPC but we do not find any force in the said contention. The procedure prescribed in CPC is applicable to all the civil proceedings. Even if it is presumed that CPC is not strictly applicable still the broad principles of the provisions of CPC are applicable in the proceedings under the Hindu Marriage Act.

We have considered the submissions made by the appellant wife regarding her inability to pay the money as she wants to use the money for the benefit of the minor child born out of the wedlock. In order to test her bonafide, we had directed the appellant to deposit 50% of Rs.12 lacs i.e. Rs.6 lacs in the FDR in the name of minor son under her guardianship. She has placed on record two FDRs of Rs.3 lacs each made on October 25, 2017 till October 24, 2018 indicating that an interest of Rs.20295/- will accrue on each FDR at the rate of 6.60% per annum.

Taking into consideration the totality of the circumstances and deposition in her affidavit that she may be granted time to repay any amount in installments we deem it appropriate in the interest of justice to uphold the order dated November 25, 2016 regarding refund of Rs.12 lacs but in the interest of justice the same amount will be adjusted in the following manner which will be beneficial for the respondent husband, the minor child who is the most effected party and the appellant wife:-

- i) A sum of Rs.3 lacs out of the said Rs.12 lacs will be adjustable towards her maintenance amount till date w.e.f. the year 2012, as the parties appear to have been living separately and are indulging in various types of litigation;
- ii) A sum of Rs.2 lacs out of FDR of Rs.6 lacs which are maturing on October 24, 2018 is permitted to be withdrawn after the above said date to be utilized in any manner for day to day expenses for the maintenance of the minor child;
- iii) A sum of Rs.4 lacs shall remain deposited in FDRs in the name of minor child Parv under the guardianship of appellant till the child attains majority on August 20, 2030 with liberty to utilize the interest accruing from the FDR periodically in case desired by the appellant for the welfare of the minor child;
- iv) A sum of Rs.3 lacs, however, will be required to be returned to the respondent within a period of two years in four equal instalments payable by March 1, 2020 i.e. first instalment will be payable by August 31, 2018, second will be payable by February 28, 2019, third will be payable by August 31, 2019 and fourth by February 28, 2020.

In case of failure to pay the amount in time, the respondent will be entitled to seek execution with interest on delayed payments at the rate of 12 % per annum.

It is clarified that **nothing mentioned in this order would prejudice any proceedings for maintenance pending before any Court and right of appellant to claim maintenance in any other proceedings under law.**

The amount in lieu of maintenance granted to the appellant wife and the amount paid to the child will not be adjustable in any other proceedings and will not affect the adjudication of any other proceedings.

With the above modifications, the appeal is disposed of.

(M.M.S. BEDI)
JUDGE

February 27, 2018
sanjay

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.