

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-467-2016 (O&M)

*(converted to petition u/s 13-B
of Hindu Marriage Act 1955)*

Date of decision: 7.3.2018

1. Parveen Kumari daughter of Shadi Ram, resident of Street No.1, Mohalla Bhagatpura, Phagwara, District Kapurthala.

.....Petitioner No. 1

2. Narinder Kumar Rakshit son of Sh. Manik Chander Rakshit, resident of H.No.8, Golden Colony, Deep Nagar, Jalandhar, Cantonement.

.....Petitioner No. 2

Petition u/s 13-B of Hindu Marriage Act
1955 for dissolution of marriage by
decree of divorce through mutual
consent.

**(converted from Appeal vide order dt.
16.1.2018)**

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

Present : Mr. Sandeep Jain, Advocate for petitioner no.1.

Mr. Vivek Sharma, Advocate for petitioner no.2.

GURVINDER SINGH GILL, J.

1. Narinder Kumar Rakshit and his wife Parveen Kumari have filed a joint petition under Section 13-B of Hindu Marriage, Act, 1955 (hereinafter referred to as 'the Act') seeking dissolution of their marriage by a decree of divorce by

mutual consent.

2. Parveen Kumari (wife) had initially filed a petition under Section 13 of the Act seeking dissolution of her marriage with her husband Narinder Kumar Rakshit on grounds of desertion and cruelty, which was accepted by the Court of Additional District Judge, Kapurthala vide judgment and decree dated 20.9.2016 and marriage between the parties was dissolved by passing a decree of divorce.
3. Aggrieved with the aforesaid judgment granting divorce, petitioner no. 2-husband challenged the same by filing appeal in this Court. During pendency of the appeal, an amicable settlement was reached at amongst the parties and an application seeking permission to convert the appeal into a petition under Section 13-B of the Act was filed which was allowed by this Court vide order dated 16.1.2018 and the petition under Section 13-B of the Act was taken on record.
4. Statements of the parties were recorded on the first motion on 1.2.2018. Narinder Kumar Rakshit (husband) stated before this Court that his marriage was solemnized with Parveen Kumari on 30.1.2008 but on account of temperamental differences, they have been residing separately w.e.f. 2009. He stated that a decree of divorce had been passed against him by the lower Court which he challenged by way of filing an appeal in this Court, but now he and his wife had entered into a compromise Ex.CX, as per which he would pay an amount of ₹ 50,000/- to his wife and that he undertakes to pay another amount of ₹ 1.5 lacs at second motion stage. He stated that the marriage may be dissolved by passing a decree of divorce in terms of Section 13-B of the Act.

Parveen Kumari endorsed the statement made by her husband and admitted having entered into a compromise Ex.CX. She further stated that the marriage may be dissolved by passing a decree of divorce in terms of Section 13-B of the Act. The matter was adjourned to 6.8.2018 for recording statements of the parties on the second motion.

5. However, an application bearing C.M. No.4474-CII of 2018 was subsequently filed on 19.2.2018 on behalf of petitioner no.1 seeking waiving off the mandatory period of six months for grant of divorce in light of judgment of Hon'ble Supreme Court reported as **2017(4) RCR (Civil) 608 Amardeep Singh Vs. Harveen Kaur.**
6. We have heard learned counsel for the petitioners while considering the aforesaid application. In the present case, the parties have been litigating since the year 2013. In fact the wife had been granted divorce by the lower Court vide judgment and decree dated 20.9.2016 which was challenged by the appellant-husband by way of filing appeal. The matter was referred to Mediation and Conciliation Centre of this Court, where with the efforts of the Mediator, the parties reached at a settlement so as to dissolve their marriage by mutual consent. Forcing the parties to wait for another six months would only prolong their agony especially when the decision taken by them after due deliberations to part ways certainly cannot be said to have been taken in a hurry as the parties have been litigating since the year 2013. Hon'ble the Supreme Court in **Amardeep Singh's case** (supra) has held that it is open to the Court to exercise its discretion in the facts and circumstances of the case for waiving off the statutory period especially when there is no possibility of the parties resuming cohabitation. In the present case, as noticed above, all efforts

for bringing about rehabilitation had failed and a conscious decision has been taken by the parties to dissolve their marriage by mutual consent. As such, in view of the ratio of Amardeep Singh's case (supra), we accept the application and waive off the statutory waiting period of six months prescribed under Section 13-B(2) of the Act.

7. Statements of both the petitioners have been recorded today on the second motion wherein they have reiterated their stand that they wish to dissolve their marriage by a decree of divorce by mutual consent. Narinder Kumar Rakshit (husband) has categorically stated that he wishes to withdraw his appeal and undertakes to pay the balance amount of ₹ 1.5 lacs on 4.5.2018 in the shape of bank draft in favour of his wife. Parveen Kumari has also stated identically. She has stated that since her husband has withdrawn the appeal and undertakes to pay ₹ 1.5 lacs as per terms of the compromise on or before 4.5.2018, the marriage may be dissolved by a decree of divorce by mutual consent.
8. In view of the aforesaid statements, we are satisfied that pursuant to irretrievable breakdown of marriage of the petitioners, they have reached at an amicable settlement for dissolving their marriage by mutual consent. Both the parties have admitted having entered into a compromise Ex.CX. We are also satisfied that the parties have entered into the settlement out of their free will and without their being any undue pressure on them.
9. Accordingly, the appeal filed by Narinder Kumar Rakshit is permitted to be withdrawn. Further, in view of compromise, the decree of divorce on grounds of desertion and cruelty passed in favour of wife in terms of Section 13 of the Act is set aside. The petition under Section 13-B of the Act filed before this

Court by the petitioners seeking dissolution of their marriage by mutual consent is hereby accepted and marriage of the petitioners is hereby dissolved by passing a decree of divorce by mutual consent. The petitioners shall remain bound by the terms and conditions of compromise Ex.CX which will form part of the record.

10. Decree sheet be prepared. Parties are left to bear their own costs.

(M.M.S.Bedi)
Judge

(Gurvinder Singh Gill)
Judge

7.3.2018
Kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No