

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

**FAO-5908 OF 2018 (O&M)
DATE OF DECISION : 26.9.2018**

Sunder

...Appellant

versus

Manisha

...Respondent

**CORAM : HON'BLE MR. JUSTICE M. M. S. BEDI
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present : Mr. Aditya Sanghi, Advocate,
for the appellant.

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

CM-20760 OF 2018

Heard on the application under Section 5 of the Limitation Act, for condonation of delay of 113 days in filing the appeal.

Without expression of any opinion regarding maintainability of the appeal, the misc. application is allowed and delay of 113 days in filing the appeal is condoned.

FAO-5908 OF 2018

The appellant had sought decree of divorce by mutual consent under Section 13-B of the Hindu Marriage Act, by filing a joint petition along with his wife, before the District Judge, Family

Court, Faridabad. The respondent-wife, after receipt of sum of ₹10,00,000/- in total, opted to withdraw her consent. The present appeal has been filed against order dated 12.4.2018, challenging the dismissal of petition under Section 13-B of the Hindu Marriage Act.

We have considered the facts and circumstances of the case. In the light of decision of this Court in ***FAO-8191 of 2017 Rajbir v. Sushma, decided on 15.12.2017***, wherein the maintainability of appeal in such circumstances has been considered and it has been held by this Court that as per the judgment in ***Deepak Singh v. Pooja 2016 (2) RCR (Civil) 742***, the spouse would be entitled to restitution of the amount already paid to the wife.

Following the same precedent, we are of the opinion that marriage between the parties, in peculiar circumstances of the case, can not be dissolved by decree of divorce by mutual consent, by this Court, by exercising appellate jurisdiction. However, it will be open to the appellant to seek divorce by due process of law. The conduct of respondent-wife may also be relied upon by the appellant-husband as one of the grounds, besides claiming refund of the amount subject to any condition, to be considered by the lower Court.

The petition is disposed of in limine, with an observation that in case the appellant files an application for restitution before the lower Court within a period of 15 days, the

same will be considered in the light of law cited by counsel for the appellant.

(M. M. S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

SEPTEMBER 26, 2018
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- 1. Whether speaking/reasoned : YES/NO
- 2. Whether reportable : YES/NO