

FAO-M-92-2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO-M-92-2017 (O&M).
Decided on: August 31, 2018.**

Gagan Banga

.. Appellant

VERSUS

Sweety @ Sunita

.. Respondent

*** * ***

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

*** * ***

**PRESENT Mr.Dinesh Arora, Advocate,
for the appellant.**

**Mr.Arnav Sood, Advocate,
for the respondent.**

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

The appellant and respondent had filed a joint petition under Section 13-B of the Hindu Marriage Act before the Court of Additional District Judge, Hoshiarpur.

At the second motion stage, the respondent-wife had backed out from the original stand taken up by her at first motion as a result of which the lower Court had dismissed the joint petition filed by the parties for divorce by mutual consent.

The appeal filed by the appellant is not maintainable.

Counsel for the appellant has submitted that a direction be issued to the respondent to pay back the amount of Rs.2 lac which has

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been received by her on the basis of settlement arrived at between the parties.

We have considered the contention of the learned counsel for the appellant and are of the opinion that as per the judgment in **Pooja Mittal Vs. Vinay Mittal, FAO-M-459-2016, decided on 14.2.2018,** under Section 144 of the Code of Civil Procedure, the lower Court has got jurisdiction to order restitution to place the parties in a position which they would have occupied but for the order passed by the Court. On the basis of above said provision, the appellant has got a right to seek refund of the amount by filing an application before the lower Court.

The appeal is dismissed as not maintainable relegating the parties to seek the legal remedy as mentioned hereinabove giving opportunity of hearing to the respondent. It will be open to the lower Court to pass any appropriate order, in the interest of justice i.e. either to order refund or to order adjustment of the amount towards any amount due or claimed as maintenance by the respondent-wife.

(M.M.S. BEDI)
JUDGE

August 31, 2018.
raj arora

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No