

109.

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

FAO-M-170-2018

Date of decision:18.05.2018.

Baljinder Singh

... Appellant

Versus

Satwinder Kaur @ Satvir Kaur

.... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present: Mr.Aminder Singh, Advocate,
for the appellant.

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

Appellant-husband is aggrieved by order dated 01.02.2018, by virtue of which, the respondent-wife had withdrawn her consent for divorce by mutual consent in proceedings under Section 13-B of Hindu Marriage Act.

Counsel for the appellant-husband has submitted that the respondent-wife has taken the money as permanent alimony. Thereafter, a settlement was arrived at between the parties but she has subsequently withdrawn consent to the terms of the settlement.

As per the grounds of appeal, appellant-husband has claimed that the trial Court ought to have granted decree of divorce or should have ordered the return of amount of ₹9.50 lakhs which had been taken by the respondent.

We have considered the facts and circumstances of the case and are of the opinion that the respondent-wife at the time of second motion stage, has got right to refuse to give consent for divorce. The appeal against the refusal of the respondent to give consent is not maintainable. So far as the claim of the appellant-husband for return of sum of ₹9.50 lakhs is concerned, a similar situation had cropped up before this Court at on earlier occasions. In **Pooja Mittal Versus Vinay Mittal** (FAO-M-459 of 2016) decided on 14.02.2018, a Division Bench of this Court, relying on the provisions of Section 144 of CPC and a Division Bench judgment in **Sukhdeep Kaur Versus Ravinder Pal Singh-2014(3) PLR 514** has held that an application for refund of amount received in proceedings under Section 13-B of Hindu Marriage Act is maintainable.

We are of the considered opinion that the appellant-husband is required to be relegated to the alternative remedy available to him i.e. to file an application under Section 144 of CPC for restitution to place the parties in a position which they would have occupied but for an order passed by the Court and to seek refund.

The appeal is disposed of as not maintainable with liberty to the appellant-husband to file an application for refund of the amount. If any such application is filed, the same shall be entertained by the lower Court by providing an opportunity of hearing to the respondent-wife. In case the application is filed within a period of one month from today, the same will be deemed to have been filed within a period of limitation.

Since we have opted to decide this appeal in limine with an objective to prevent the delay and unnecessary expenditure to the

respondent-wife, it is observed that in case the respondent is aggrieved by this order, it will be open for her to approach this Court by moving a miscellaneous application.

(M.M.S. BEDI)
JUDGE

(HARI PAL VERMA)
JUDGE

18.05.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No