

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

105

FAO-M-172-2018 (O&M)

Date of Decision:23.05.2018

Ritu Bala

.....Appellant

Versus

Naresh Kumar

.....Respondent

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

**Present: Mr. Suneet Pal Singh Aulakh, Advocate,
for the appellant.**

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

Vide impugned order dated 07.03.2018, the petition under Section 13-B of the Hindu Marriage Act, 1955 (for brevity “the H.M. Act”) filed by the appellant and respondent jointly was dismissed on the ground that appellant-wife (petitioner No.1 before the lower court) has withdrawn her consent for divorce as she wanted custody of the child.

Counsel for the appellant submits that the appellant had not made custody of the child as a “condition precedent” for a decree of divorce by mutual consent. But as a matter of fact, she had reiterated whatever she had stated in her statement made at first motion stage on 30.08.2017.

With the assistance of counsel for the appellant, we have seen the statement of appellant dated 30.08.2017 made at first motion stage, wherein it is, *inter alia*, recorded as follows:-

“XX XX XX XX XX

Minor child is in the custody of petitioner No.2 and he has

undertaken that he will bear the expenses of his education, upbringing, food, marriage etc. but if the petitioner No.2 fails to do so, then I will be entitled to get the custody of minor child from the petitioner No.2 through the process of law.

XX XX XX XX XX XX".

Her statement as recorded on 07.03.2018, reads as follows:-

“I withdraw my consent for divorce through mutual consent as I want to have custody of my child”.

Counsel for the appellant has reiterated that appellant-wife never intended to deviate from the statement made at first motion stage on 30.08.2017 but she only had reiterated her statement after six months which had been agreed to by the husband also. It has also been clarified by counsel for the appellant that the appellant-wife never wanted to lay condition of custody of the child as a “condition precedent” for agreeing to the divorce by mutual consent at second motion stage herein.

We have considered the facts and circumstances of the case. In case, the appellant-wife wants to reiterate the statement made at the first motion stage, which was agreeable to the respondent-husband and custody of the child was not a “condition precedent”, there does not appear to be any obstacle for the trial Court to proceed further, in accordance with law in the proceedings under Section 13-B of the Act. The appropriate remedy available for the appellant is to move a miscellaneous application before the lower court, clarifying the fact that she had not imposed condition for the custody of the child as a “condition precedent” for a decree of divorce by mutual consent, but she only wants to reiterate whatever she stated at the first motion stage on 30.08.2017.

This appeal is disposed of in *limine* with the observations that

the wife will be entitled to move an application invoking the inherent jurisdiction of the lower court to recall the order dated 07.03.2018. In case, any such application is filed within 15 days, the same will be entertained and will be decided after issuing a short date notice to the respondent. If the parties mutually agree to any condition, it will be open to the lower court to grant a decree of divorce with mutual consent of the parties after recording statements of the parties at second motion stage.

The present appeal has been disposed of in *limine* taking into consideration the peculiar facts and circumstances of the case with an object to save the parties from unnecessary expenditure and to avoid delay in the proceedings. In case, the order is not acceptable to the opposite party, it will be open to the respondent to approach this Court by moving appropriate application within a reasonable time.

(M.M.S. BEDI)
JUDGE

May 23, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No