

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

**FAO-M-230 OF 2018
DATE OF DECISION : 7.8.2018**

GIAN SINGH

...APPELLANT

VERSUS

SURJIT KAUR

...RESPONDENT

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

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

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

This appeal has been preferred by Gian Singh-husband of respondent-Surjit Kaur against order dated 14.5.2018 passed by Additional District Judge, Hoshiarpur, dismissing petition under Section 13-B of the Hindu Marriage Act (for short the Act), on the basis of respondent having expressed her intention not to get the divorce under Section 13-B of the Act. The present appeal has been filed placing reliance upon the judgment in ***Anil Khatwani v. Nistha Khatwani 2013 (6) RCR (Civil) 1407***, claiming that depending upon the facts and circumstances of each case, decree by mutual consent under Section 13-B of the Act can be granted, if the withdrawal of consent by one of the parties at the stage of moving a joint motion sub-section (2) of Section 13-B of the Act is found to be not genuine by the Court.

It was observed that in such circumstances, an inference of continued consent can be drawn by the Court giving it jurisdiction to pass the decree under Section 13-B of the Act.

We have considered the facts and circumstances of the case. The parties agreed to part company on payment of lump-sum amount of ₹4,00,000/- to the respondent-wife out of which ₹2,00,000/- were received by her on 9.11.2017.

We do not find any reasonable ground to permit the appellant-husband to challenge the dismissal of petition under Section 13-B of the Act on the withdrawal of consent of respondent-wife, at the second motion stage.

We have considered the grievance of the appellant-husband that a sum of ₹2,00,000/- has been obtained by the respondent-wife and that he was ready to pay the agreed amount of ₹4,00,000/-. The appeal, in above said circumstances also, cannot be entertained to force the respondent-wife to give her consent at the second motion stage.

This Court in **FAO-M-459 of 2016 decided on 14.2.2018** titled as **Pooja Mittal v. Vinay Mittal**, has held that under the provisions of Section 144 of CPC, a Civil Court will have the jurisdiction to cause restitution to place the parties in a position which they would have occupied, but for an order passed by the Court, relying upon the judgment in **Sukhdeep Kaur v. Ravinder Pal Singh 2014(3) PLR 514**, wherein an order passed for refund of the amount received in the proceedings

under Section 13-B of the Act was upheld, when the wife was not willing for grant of divorce by making statement in the Court.

It will be open to the appellant to seek the refund of the amount by moving an application before the lower Court. It will be open to the Court also to consider the circumstances and to pass an order of refund or for adjustment of the amount or any other order in the interest of justice.

The appeal is disposed of as not maintainable, relegating the appellant to the above said remedy, in accordance with law.

It is not out of place to mention here that dismissal of the petition under Section 13-B of the Act would not debar the right of the appellant to seek remedy under any of the provision of Section 13 of the Act, if so opted.

(M. M. S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

AUGUST 07, 2018
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| 1. | Whether speaking/reasoned : | YES/NO |
| 2. | Whether reportable : | YES/NO |