

FAO-M-232-2018

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

**FAO-M-232-2018.
Decided on: August 9, 2018.**

Rajwant Kaur

.. Appellant

VERSUS

Jhujhar Singh

.. Respondent

*** * ***

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

*** * ***

**PRESENT Mr.Ritesh Pandey, Advocate,
for the appellant.**

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

Vide order dated 22.5.2018, the Additional District Judge, Gurdaspur, while considering the application under Section 13-B of the Hindu Marriage Act, filed by appellant Rajwant Kaur and respondent Jhujhar Singh, has, at first motion stage, dismissed the same on the ground that maintenance allowance has not been paid to the wife and that wrong averments had been made in the pleadings regarding the payment of maintenance allowance.

Aggrieved against the above order dismissing petition under Section 13-B of the Hindu Marriage Act, Rajwant Kaur, has filed the

present appeal. She is present in the Court.

On asking of the Court, she states that she has waived of her right to maintenance allowance and is not interested in any amount of maintenance. She has further submitted that maintenance has not been awarded to her but she expressed her intentions to seek dissolution of marriage by mutual consent under Section 13-B of the Hindu Marriage Act.

Without forming an opinion whether her statement is expression of her consent or not, we feel that a clarification in this context could have been obtained by the Additional District Judge, Gurdaspur. In case a wife waives off her right of maintenance voluntarily, without any threat, coercion or undue influence and is ready to give her consent for divorce by mutual consent, we do not find any reason to decline the decree of divorce on the basis of consent given.

Without expression of any opinion on merits or regarding the maintainability of the appeal, we are of the considered opinion that circumstances of the present case warrant re-recording of the statements of the parties and get clarification whether the parties have agreed with free consent to get the marriage dissolved under Section 13-B of the Hindu Marriage Act.

In view of statement made by Rajwant Kaur appellant in Court today, we deem it appropriate to set aside the order dated 22.5.2018 and require the parties to re-appear before the same Court and get their statements recorded for consideration of the petition under Section 13-B of the Hindu Marriage Act, in accordance with procedure of law.

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Accordingly, the present appeal is allowed setting aside order dated 22.5.2018, with a direction that the petition under Section 13-B of the Hindu Marriage Act, filed by the parties be re-considered by recording the statements of the parties. In case the Court is of the opinion that the consent for divorce by mutual consent is voluntarily given without any threat, coercion or undue influence, it will be open to the Court to grant the decree of divorce by mutual consent.

The parties will appear before the Court of Additional District Judge, Gurdaspur, on or before 1.9.2018 and get their statements recorded on revival of proceedings under Section 13-B of the Hindu Marriage Act.

(M.M.S. BEDI)
JUDGE

August 9, 2018.
raj arora

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No