

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M-256 of 2018

Date of Decision: September 11, 2018

Harjeet SinghAppellant

Vs.

Satinder KaurRespondent

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

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Present: Mr.Gopal Sharma, Advocate for the appellant.

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M.M.S. BEDI, J.

Husband has preferred this appeal aggrieved by dismissal of a petition under Section 13-B of the Hindu Marriage Act, for short 'the Act' filed jointly before the lower Court but dismissed on the ground that the respondent-wife had withdrawn her consent at second motion statement after having received a sum of Rs.2,12,500/- from the appellant. The said amount was received by her while making statement on October 28, 2017. The said amount was part of the total lumpsum amount of Rs.4,25,000/- settled between the parties in view of divorce.

The lower Court had though dismissed the petition under Section 13-B of the Act but simultaneously directed that sum of Rs.2,12,500/- would be returned to the appellant within a period of 3 months from the date of disposal of the divorce petition failing which he would be entitled to recover the same by due process of law alongwith interest at the

rate of 6% per annum from the date of receipt of the amount till the date of realization,.

When confronted with the maintainability of the appeal, counsel for the appellant placed strong reliance on the judgment of Rajasthan High Court in **Anil Khatwani Vs. Nistha Khatwani**, 2013 (6) RCR (Civil) 1407, wherein it was observed that where a Court was satisfied upon inquiry, reconciliation talks and other material on record that averment made in petition under Section 13-B of the Act were true and consent of both parties for dissolving the marriage was not obtained by any force, fraud or undue influence and that the circumstances and facts satisfying the requirement of Section 13-B of the Act continue to exist and an inference of continued consent of respondent wife for grant of divorce by mutual consent could be safely drawn divorce can be granted. Making such observations, the Court had passed a decree of divorce. In the said case the Court had arrived at a conclusion that if Court comes to a conclusion that withdrawal of consent was not genuine and the Court still finds that it is not possible for the parties to live together and the marriage of the parties have irretrievably broken down and the initial consent was not obtained by any force, fraud and undue influence at the time of filing of petition under Section 13-B (1) of the Act, the decree of divorce can be granted by the Court.

We have carefully gone through the judgment and are of the opinion that the said judgment does not lay down an absolute law that in every case a Court will enter into adjudication of the controversy whether consent at the first stage was genuine and to find out whether decree of divorce should be granted despite the fact that one of the parties to the case

has withdrawn the consent. The Rajasthan High Court in para 44 of the judgment has observed that it will depend upon the facts and circumstances of each case and the 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 petition under sub-section (2) of Section 13 B of the Act is found to be not genuine. Even if the parameters of the said judgment are applied to the present case, we do not find any factor which would indicate that the respondent was not at liberty to withdraw her consent. The rights of the appellant have already been safeguarded by the lower Court by giving liberty to seek refund of the amount paid at the first motion stage. We do not find any ground to grant decree of divorce under Section 13 B of the Act in view of respondent having withdrawn her consent at second motion sage.

The appeal is dismissed as not maintainable. However, nothing said in this order will prejudice the rights of the appellant to seek divorce as per provisions of law. Dismissal of petition under Section 13 B of the Act will also not affect the rights of the appellant to seek the decree of divorce on the ground already taken by him in the original petition which was filed prior to the filing of petition under Section 13 B of the Act.

(M.M.S. BEDI)
JUDGE

September 11, 2018
sanjay

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.