

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

FAO-M-293-2018 (O & M)
Date of Decision: 10.12.2018

Amarjit Kaur and another

.Appellants

Vs.

Malkit Singh

. Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present: - Mr.J. P. Singh, Advocate
for the appellant.

Mr.Ashok Kumar Sama, Advocate
for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

CM-22951-CII-2018

This application is filed for seeking condonation of 33 days
delay in filing the appeal.

Learned counsel for the respondent has submitted that he does
not want to file reply but he has opposed the application seeking
condonation of delay.

We have heard learned counsel for the parties

We are of the view that the appellant has assigned the sufficient
cause for the condonation of delay in the application.

Therefore, the application is allowed and the delay of 33 days
in filing the appeal is condoned.

Main Case.

This appeal has arisen from the order dated 31.05.2018 passed by the learned District Judge, Ferozepur by which petition under Section 13-B of the Hindu Marriage Act, 1955 ('Act' - for short) filed by both the appellant-wife and respondent-husband for seeking dissolution of their marriage by decree of divorce by way of mutual consent was dismissed.

Although the husband has been impleaded as respondent but he also filed an application as a second party before the learned trial Court under Section 13-B of the Act. He has submitted that he has no objection if the appeal is allowed and the impugned order is set aside.

In brief, the marriage of the parties was solemnized on 11.12.2015 as per Sikh rites. They both were blessed with a female child. Due to incompatibility, they decided to seek divorce by way of mutual consent. Their joint statement at the stage of first motion was recorded on 22.08.2017 by the learned trial Court. Thereafter, the case was adjourned for 31.05.2018 for recording of the statement at the second motion stage. However, on that date, the statement was not recorded and the Court had passed the impugned order by which the divorce petition was dismissed on the ground that in case of divorce, the minor girl child would be deprived of love and affection of her mother and would be left at the mercy of the others. However, learned counsel for both the parties have submitted that it has been decided that in case of divorce, the minor girl child would remain in the care and custody of her father. It is also submitted by learned counsel for the parties that the learned Court below has committed a patent error as there is no provision in Section 13-B of the Act that the decree of divorce

We have heard learned counsel for the parties and perused the record.

Section 13-B of the Act is a special provision in the Act for grant of decree of divorce by way of mutual consent. The sine qua non for invoking Section 13-B is that the parties should have been living separately for a period of one year or more and they have not been able to live together and that they have mutually agreed that their marriage be dissolved. On presentation of the application before the competent Court, the statement of the parties is recorded at the first motion stage and the second statement of the parties is recorded at the second motion stage after a period of six months. If the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that the marriage was solemnised and that the averments in the petition are true, would pass a decree of divorce, declaring the marriage to be dissolved with effect from the date of the decree.

In the present case, the learned Court below has dismissed the petition only on the ground that the conscious of the Court was not permitting it to grant divorce by way of mutual consent keeping in view the future of the small girl child, who would be deprived of the love and affection of the mother. Therefore, this observation of the Court below is totally contrary to the provisions of the Act as the modalities are to be decided by the parties to the lis for the purpose of grant of divorce and it is for the Court to see that the consent given freely by both of them and is not because of any kind of undue influence, coercion etc.

Thus in view thereof, the impugned order is unsustainable and

same is hereby set aside and the matter is remanded back to the learned trial

Court to proceed with the application filed under Section 13-B of the Act and record the second motion statement as required under Section 13-B of the Act.

Parties to appear before the learned trial Court on 18.01.2019.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

10.12.2018
A.Kaundal

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No