

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-50-2018 (O&M)
Date of Decision:- 16.2.2018

Sandeep Sharma

... Appellant

Versus

Juhi Sharma

... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. Naveen Sharma (Moudgil), Advocate for the appellant.

M.M.S. BEDI, J.

The appellant-husband alongwith respondent-wife had moved an application under Section 13-B of the Hindu Marriage Act, 1955 after engaging separate counsels on 1.5.2017. After recording the statements of the parties at first motion on 2.5.2017, the case was adjourned for 8.11.2017 for recording the statements of the parties at second motion. On 8.11.2017, when the case was taken up for recording of the statements of the parties at second motion, the appellant-husband alongwith his counsel was present but no one had put in appearance on behalf of the respondent-wife, as such the petition was held not maintainable on account of non appearance of the respondent-wife and the case was dismissed in default with liberty to the parties to get their matter regarding recovery settled separately in accordance with law.

Counsel for the appellant has contended that the statements

recorded at first motion could have been considered as an admission and a decree as per Order 12 Rule 6 CPC could have been passed.

We have considered the contention of learned counsel for the appellant and are of the opinion that the appellant could have moved the trial Court for any of the following reliefs:-

- (i) As the petition had not been withdrawn by the counsel for the respondent or respondent within a period of 6 months as per provisions of Section 13-B (2) of the Hindu Marriage Act, 1955, an application for adjournment under Order 17 Rule 1 CPC could have been filed as the petition under Section 13-B of the Hindu Marriage Act, 1955 could be decided within a period of 18 months after the date of presentation of the petition, in case it is not withdrawn;
- (ii) A petition under Section 144 CPC for restitution seeking refund of the amount already paid could have been filed;
- (iii) As the Court had dismissed the petition in default of one of the parties, a petition for its restoration within a period of 18 months could have been filed.
- (iv) A request for referring the matter to the Mediation, which has been raised before this Court, could have been made before the lower Court on the date when petition was dismissed.

In view of the abovesaid circumstances, we are of the opinion that the appeal is not the appropriate remedy for the appellant.

The appeal is dismissed as not maintainable without prejudice to the rights of the appellant to seek any alternative appropriate remedy against the respondent in accordance with law.

(M.M.S. Bedi)
Judge

16.2.2018
pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No