

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-65-2018 (O&M)

Reserved on 6.3.2018

Pronounced on 23.3.2018

Mohan Singh Bindra

.....*Appellant*

Versus

Lovepreet Kaur

.....*Respondent*

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

Present : Mr. Arvind Thakur, Advocate for the appellant.

GURVINDER SINGH GILL J.

1. The appellant-husband has filed this appeal challenging judgment and decree dated 19.12.2017 vide which a petition filed by him and his wife (respondent) under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as "*the Act*") seeking dissolution of their marriage by way of mutual consent has been dismissed by learned Additional Civil Judge (Senior Division) Garhshankar (exercising the powers of District Judge at Garhshankar).
2. The appellant-husband in the joint petition under Section 13-B of the Act averred that his marriage with respondent-wife was solemnized on 24.12.2015 as per Sikh rites and ceremonies but no issue was born out of the wedlock. It is averred therein that the relation between the parties never remained cordial and they withdrew from each-other's company on 8.1.2016 and have been residing separately ever since then and that ultimately with the intervention of

the parents and relatives they had agreed to dissolve their marriage by mutual consent and consequently filed a petition under Section 13-B of the Act.

3. Upon presentation of the petition under Section 13-B of the Act, statements of both the parties were recorded on the first motion by the learned lower Court on 15.2.2017. The respondent-wife, Lovepreet Kaur stated that due to temperamental differences they could not stay together and a compromise had been effected as per which, she was to pay an amount of ₹ 5 lacs to her husband and her husband was to return her passport which he had kept in his custody. The appellant-husband also stated identically.
4. After recording aforesaid statements, the matter was adjourned to 16.8.2017 for recording statements on the second motion. However, on 16.8.2017 none of the parties appeared before the Court and the matter was adjourned to 28.8.2017 and then to 12.10.2017. Even thereafter on 10.11.2017 and on 27.11.2017 none of them appeared. The counsel for the respondent-wife, Lovepreet Kaur, informed the Court that ever since 15.2.2017, when statements of parties were recorded on the first motion, Lovepreet Kaur neither issued any instructions to him nor came to the Court. The appellant-husband, however, got his statement recorded reiterating his earlier statement. He further stated that as per the statements recorded on the first motion, he had received an amount of ₹ 5 lacs from the respondent-wife and that there had been no cohabitation between them ever since recording of statements on the first motion.
5. Since, the respondent-wife did not appear before the lower Court for getting her statement recorded on the second motion, the learned lower Court

dismissed the petition holding therein that it could not be concluded that the respondent-wife was still consenting for dissolution of her marriage. The appellant-husband, aggrieved with dismissal of the petition under Section 13-B of the Act, filed the present appeal.

6. The learned counsel for the appellant-husband while assailing the impugned judgment and decree has submitted that it is not a case where the respondent-wife had ever withdrawn her consent for divorce by mutual consent and that her absence for recording her statement on second motion cannot be interpreted to mean that she had withdrawn her consent especially when she had already performed her part of the terms of the compromise i.e of transferring an amount of ₹ 5 lacs to the appellant-husband. The learned counsel in order to hammer forth his aforesaid submissions cited 2004(1) R.C.R.(Civil) 621 (Rajasthan), Suman Versus Surendra Kumar.
7. We have considered the aforesaid submissions raised before this Court and have also gone through the judgment relied upon by the learned counsel. It is apposite to refer to the provisions of Section 13-B of the Act, which read as follows:-

“ 13-B Divorce by mutual consent.

- (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

- (2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, 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 a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

8. A perusal of the aforesaid provisions show that a petition for dissolution of marriage by decree of divorce by mutual consent may be presented jointly by both the parties and thereafter the matter has to be adjourned for atleast six months before the Court proceeds to consider grant of divorce by mutual consent. The said period of six months has been statutorily prescribed to enable the parties to deliberate and think over the matter, so that efforts may be made again to patch up differences and if any decision has been taken in a hurry, the same may be undone. It is only pursuant to satisfaction of the Court regarding veracity of the pleadings made in the petition that the Court may proceed to order dissolution of marriage. In other words, the Court has to be satisfied that both the parties have taken a conscientious decision to dissolve their marriage, after deliberations, out of their free will and without there being any kind of pressure upon them.
9. In the present case, after the statements of the parties were recorded on first motion on 15.2.2017, the respondent-wife did not appear before the Court on the next date i.e. on 16.8.2017. Even though the matter was adjourned thereafter several times, the respondent-wife did not appear. So much so, even her counsel stated that he had not received any instructions from the respondent-wife. It is also pertinent to mention here that even as per the

statement of the respondent-wife recorded on 15.2.2017, the appellant-husband, pursuant to receipt of ₹ 5 lacs, was supposed to return passport of the respondent-wife. It is not known as to whether the said terms have been honoured by the appellant-husband. In these circumstances, it would certainly be hazardous to infer that the respondent-wife is still consenting for dissolving her marriage by divorce by way of mutual consent. The mere fact that she has categorically not stated anywhere that she withdraws her consent would not lead to the conclusion that she is still agreeable for a divorce especially when her conduct and non-appearance before the Court on several dates and not even instructing her counsel tends to point that she is no longer consenting for dissolving her marriage. In fact this is the very purpose of the provisions of the statute in prescribing a cooling off period of six months under Section 13-B of the Act, so that any decision made in a hurry may be undone and the parties do not go about dissolving their marriages by taking some rash decisions in a heat of passion.

10. Hon'ble the Supreme Court in Sureshta Devi v. Om Prakash, AIR 1992 SC 1904, held that the period of six to eighteen months is given in divorce petitions by mutual consent so as to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. It was further held therein that the Court should be satisfied about the bona fides and consent of the parties and that mutual consent should continue till the decree of divorce is passed.
11. The judgment relied upon by learned counsel for the appellant i.e. 2004(1) R.C.R.(Civil) 621(Rajasthan) would not advance the case of the appellant-husband in view of the distinct facts in the present case wherein some of the

terms stipulated amongst the parties are not even shown to have been duly complied with, apart from the fact that the respondent-wife has intentionally chosen to keep away from the Courts despite the matter having been adjourned several times.

12. In view of our aforesaid discussion, we do not find any infirmity in the impugned judgment and decree. There is no merit in this appeal and the same is hereby dismissed.

(M.M.S.Bedi)
Judge

(Gurvinder Singh Gill)
Judge

March 23, 2018
pankaj

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No