

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

FAO-M-128-2019 (O&M)
Date of Decision: 10.05.2019

Smt. Poonam Devi

. Appellant

Vs.

Ajay Kumar

. Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

Present: - Mr.Jainainder Saini, Advocate,
for the appellant.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal is directed against the order dated 21.1.2019 by which a petition filed by both the parties under Section 13B of the Hindu Marriage Act, 1955 [for short 'the Act'] for seeking a decree of divorce by way of mutual consent has been dismissed.

In brief, the marriage of the parties was solemnized on 3.1.2017. There is no issue out of the said wedlock. They decided to part ways and entered into a written agreement on 13.7.2018 as per which the respondent-husband was not supposed to pay anything to the appellant-wife. However, in view of the aforesaid agreement, the petition was filed and the statements at the first motion stage of both the parties were recorded on 16.7.2018 thereafter the case was posted for recording the statements of both the parties at the second motion stage for 21.1.2019. On the said date though the appellant-wife has stated that she want to take divorce by mutual consent and reiterated the pleadings of the petition and her first statement but the

respondent-husband refused to seek a decree of divorce by way of mutual consent.

In view thereof, on the same date, the Court below passed the impugned order holding that in the absence of a consent given by either parties for seeking a decree of divorce by way of mutual consent, the petition cannot be maintained and dismissed the same.

Learned counsel for the appellant has submitted that the marriage survived only for 2 weeks and it was decided between the parties by way of a written agreement that they would file a petition under Section 13B of the Act and the said petition was actually filed but after recording the first motion statements, the respondent-husband refused to record his statement at the second motion stage which is patently illegal.

We have heard learned counsel for the parties and after perusal of the record, are of the considered opinion that there is no merit in the present appeal in view of the mandatory provisions of Section 13B of the Act, which is reproduced as under: -

“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, 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 solemnized 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.”

According to Section 13B(1) of the Act, a divorce petition by way of mutual consent can only be filed if both the parties are living separately for a period of one year or more and they have not been able to live together and have mutually agreed that their marriage should be dissolved.

Section 13B(2) of the Act further provides that 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 latter 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 the marriage has been solemnized and the averments in the petition are true, pass a decree of divorce.

The six months cooling off period is provided in the Statute to the parties to rethink about their decision to get a decree of divorce by way of mutual consent as sometimes it happens that the parties out of anger or unfounded emotion file such type of petitions and realize their mistake later on.

In the present case also the respondent-husband, at the state of second motion statement, must have realized that he is committing a mistake, therefore, he refused to record his statement for the purpose of giving his free will for seeking a decree of divorce and made a specific statement before the Court that “I do not want to take divorce of mutual consent” and therefore, there was not option left with the Court but to dismiss the petition under Section 13B of the Act filed by both the parties.

In view of the above, the present appeal is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

10.05.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*