

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

FAO No.7830 of 2016 (O&M)

Date of Decision:01.02.2019

Balvinder Singh

. Appellant

Vs.

Suman Rani alias Suman Lata

. Respondent

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

Present: - Mr.Subhash Godara, Advocate, for
Mr.S.S. Dinarpur, Advocate,
for the appellant.

Mr.R.K. Saini, Advocate,
for the respondent.

RAKESH KUMAR JAIN, J.

This appeal is directed against the order dated 02.02.2016 by which a petition filed under Section 13-B of the Hindu Marriage Act, 1955 [for short 'the Act'] by the appellant-husband and the respondent-wife together for seeking a decree of divorce by way of mutual consent has been dismissed.

In brief, the marriage of the appellant with the respondent was solemnized as per Hindu rites and ceremonies on 19.6.1993. They were blessed with three children, namely, Divya Rani (born on 31.1.1998), Vikash Kumar (born in the year 2001) and Kunal Rana (born on 21.6.2009). However, due to matrimonial differences, they started living separately from 15.01.2011. The respondent-wife went to US on 12.10.2014 and residing there since then. Since the issue of incompatibility became severe therefore, they both decided to snap the ties of their marriage by obtaining a decree of divorce by mutual consent and in that process the respondent took an

amount of ₹3,50,000/- from the appellant towards full and final maintenance and permanent alimony and also decided that Divya Rani would stay with the appellant-husband and both the sons Vikash Kumar and Kunal Rana with the respondent-wife. Ultimately, a petition under Section 13-B of the Act was filed on 1.2.2016 by the respondent through her real sister Ravita Rani, who is a resident of Muzaffarnagar, Uttar Pradesh to whom she had given her special power of attorney for this purpose on 23.11.2015. The said petition has been dismissed by the Family Court, Ambala on the ground that the respondent did not come present in person to record her statement in support of the averments made in the petition and that the verification of the petition was defective. The petition was thus dismissed with liberty to the respondent to file a fresh petition subject to just exceptions of law as and when she come to India and get her statement recorded in person before the Court.

Aggrieved by the order dated 2.2.2016, the present appeal has been filed by the husband, who had earlier filed CR No.4891 of 2016 but the same was withdrawn on 5.12.2016 to file the present appeal.

Learned counsel for the appellant has submitted that the appeal was filed after a delay of 285 days for which he had filed CM No.26409-CII of 2016 in which notice was issued on 23.12.2016.

Learned counsel appearing on behalf of the respondent has not objected to the reasons assigned in the application for condonation of delay, therefore, the said application is hereby allowed.

Learned counsel for the appellant has further submitted that the matter has already been settled between the parties and he had already paid ₹3,50,000/- to the respondent towards full and final settlement and the parties have already decided about the custody of their children but the

petition filed by them has been dismissed only on the ground that the respondent did not come present for recording her statement at the first motion stage in support of the petition filed by her along with the appellant rather the statement is sought to be recorded on her behalf by her sister who is holding her special power of attorney. It is further submitted that the learned Court below has erred in dismissing the petition on the ground that the verification is defective because it is not pointed out as to what was the defect in the verification.

Learned counsel for the appellant has further argued that the statement of the respondent can be recorded by resorting to the medium of video conferencing and defect in the verification, if any, can be cured. In this regard, he has relied upon a decision of this Court rendered in **FAO-M-328-2018** titled as **“Jasmine Kaur Vs. Supinder Singh”** decided on 5.12.2018 in which wife had gone to New Zealand on study visa and the husband was in India. She was unable to come to India but her petition was dismissed on the ground that the statement of the special power of attorney cannot be recognized. In the said case, while referring to a decision of the Supreme Court rendered in the case of **“Amardeep Singh Vs. Harveen Kaur” 2017 (4) RCR (Civil) 608**, this Court had taken a decision that the statement of both the stages of first and second motion can be recorded by resorting to video conferencing in order to ensure that the consent given by the respondent is voluntary and without any undue influence and coercion. The arrangement was made by the Court that the person making the statement would be identified by her mother (special power of attorney holder) and her advocate.

Learned counsel for the respondent has also supported the case of the appellant.

Thus keeping in view the aforesaid facts and circumstances, we are of the considered opinion that the order dated 02.02.2016 deserves to be set aside and the matter deserves to be remanded back to the learned Family Court for reconsideration of the petition filed by both the appellant and the respondent for the purpose of grant of decree of divorce under Section 13-B of the Act.

Consequently, the present petition is hereby allowed and the impugned order dated 02.02.2016 is set aside. The matter is remanded back to the learned Family Court, Ambala to allow the respondent to record her statement at the first motion stage by way of video conferencing which shall be recorded by the learned Presiding Officer and at that time the respondent shall be identified by her sister Ravita Rani, whom she had given her special power of attorney, and also by her advocate. Insofar as the issue of error in the verification of the petition is concerned, the learned trial Court has not made it clear about the error in it but in any case, the learned Court below would grant an opportunity to the appellant and respondent to file an amended petition with the correct verification.

With these observations, the present appeal is hereby allowed and the parties are directed to appear before the learned Family Court, Ambala on 6.3.2019.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

01.02.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*