

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

FAO-M No. 190 of 2018 (O&M)
Date of Decision: 27.2.2019

Anita Choudhary

.....Appellant

Vs.

Rupak Rathi

.....Respondent

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

Present: - Mr. A.P.Setia, Advocate
for the appellant.

Mr. Sailesh Gupta, Advocate
for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal has arisen from the judgment and decree dated 23.1.2018 by which a petition filed by the appellant-wife under Section 13 of the Hindu Marriage Act, 1955 ('Act' for short) for dissolution of her marriage with the respondent-husband on the ground of cruelty, was dismissed.

During the pendency of this appeal, the matter was referred to Mediation and Conciliation Centre of this Court where the parties had arrived at a written compromise dated 19.11.2018 and decided to part ways on payment of a lump-sum amount by the respondent-husband to the tune of ₹ 4.00 lakhs. It was also decided that in order to obtain divorce, a petition under Section 13-B of the Act would be filed and in pursuance thereof, an application has been filed for converting the petition filed before the trial

Court under Section 13 of the Act into a petition under Section 13-B of the Act for seeking divorce by mutual consent.

It is submitted by learned counsel for the appellant that the respondent has already handed over ₹ Rs 4.00 lakhs towards full and final payment. Learned counsel for the appellant, however, has submitted that the appellant is at present residing at 52, Spurling Road, Dagenham, RM9 5 RH, United Kingdom and is unable to appear before this Court for the purposes of recording her statement at the first and second motion stage. Counsel for the appellant has submitted that the statement of her father, namely, Sh. Mani Ram Choudhary may be recorded who has been appointed as Special Power of Attorney by her.

We have heard learned counsel for the parties and are of the considered opinion that it would be just and expedient if the statement of the appellant is recorded at the first and second motion stage before the Court about her decision to dissolve her marriage with the respondent by way of mutual consent. It is necessary for the Court to see that the statement made by both the parties is voluntary and without there being any undue influence or coercion.

Thus, in view thereof, we allow the appellant to withdraw this appeal and to file a petition under Section 13-B of the Act before the competent Court of law i.e. Court at Panchkula. In case any such petition is filed, the Court shall record the statements of both the parties on the first motion stage and in particular, the statement of Anita Choudhary (appellant herein) by way of video conferencing. At the time of recording the statements, Sh. Mani Ram Choudhary, father of the appellant shall remain present along with their counsel to identify the appellant. Thereafter, the

parties may file an application before the said Court for waiving off the statutory period of six months in terms of the judgment of Supreme Court in ***Amardeep Singh versus Harveen Kaur Civil Appeal No. 11158 of 2017 decided on 12.9.2017*** wherein the Hon'ble Supreme Court has held that the statutory period of six months can be waived off in the peculiar facts and circumstances of the case.

With these observations, while allowing the appellant to withdraw the appeal, they are relegated to avail the remedy in terms of Section 13-B of the Act before the trial Court.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

February 27, 2019
Gurpreet

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