

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

218

FAO-M-125-2017 (O&M)

*(Converted to petition under Section 13-B
of Hindu Marriage Act, 1955)*

Date of Decision : 08.03.2019

Prashant

... Appellant

Versus

Prabhjit Kaur

... Respondent

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

Present: Mr. P.S.Jammu, , Advocate for the appellant.

Mr. A.S. Manaise, Advocate for the respondent.

RAKESH KUMAR JAIN, J.(ORAL)

This appeal has arisen from the judgment and decree dated 09.03.2017 passed by the Additional District Judge, Gurdaspur vide which the petition filed under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') by the appellant for seeking dissolution of marriage by way of decree of divorce on ground of cruelty was dismissed.

While this appeal was pending before this court, matter was referred to the Mediation and Conciliation Centre of this Court where parties had entered into written compromise dated 23.05.2018 and decided to part ways finally on payment of lump-sum amount of ₹15 Lacs. It was also decided that they will file an application for seeking to covert the application filed under Section 13 of the Act before the trial court into the petition under Section 13-B of the Act. Proposed application was filed and

allowed with the settlment/compromise which was marked as Ex.CX. The

court had recorded the order dated 19.07.2018 which reads as under:-

"Appellant Prashant had filed a petition for decree of divorce, which was dismissed by the Additional District Judge, Gurdaspur. Aggrieved by the same, the appellant-husband has filed the appeal.

During pendency of the appeal, a settlement has been arrived at between the parties, while the appellant-husband was represented through his father, he being in abroad. The settlement arrived at between the parties before the Mediation and Conciliation Centre of Punjab and Haryana High Court, has been taken on record as Ex. CX.

The respondent-wife, who is present in Court, has received a sum of `7 lakh in the shape of a bank draft as part payment of the permanent alimony. She has got no objection in case the appellant-husband is granted decree of divorce. However, the allegations in the divorce petition are not admitted.

In view of said circumstance, we permit the parties to convert this appeal into a petition under Section 13-B of the Hindu Marriage Act. As per the terms of the settlement Ex. CX, out of agreed amount of `15 lakh, a sum of `7 lakh will be considered to have already been paid to the wife. Puran Chand, father and attorney of appellant-husband, who is present in Court, has submitted that the appellant-husband is expected to return to India in the end of December, 2018.

Permission is granted to the parties to convert the appeal into proceeding under Section 13-B of the Hindu Marriage Act. The petition may be filed through the attorney of Prashant but he would be required to be present in Court personally at least once to give the consent and pay the balance amount of permanent alimony agreed between the parties.

Adjourned to 20.12.2018.

The parties may file necessary application any time in the meanwhile. "

Thereafter, both the parties had appeared before this court and recorded their statements at the first motion stage. At that time, the appellant-husband had paid ₹7 Lacs to the respondent-wife out of the total amount of ₹15 Lacs and the case was adjourned. In the meantime, appellant-husband has also paid Rs. 8 Lacs to the respondent-wife. As such, the entire amount of ₹15 Lacs, as decided between the parties, had already been paid. Now the stage is of the recording of statement at the second motion stage.

Counsel for the appellant has submitted that the appellant is in Australia and is not in a position to come to India for the purpose of recording his statement. He has prayed that the statement of his father who is his special power of attorney, be recorded in his place at the second motion stage.

We have considered the submissions made by the appellant and are of the considered opinion that the statement of the husband is required to be recorded because at the second motion stage again the court has to ask him personally as to whether he is still ready and willing to seek dissolution of marriage by way of mutual consent and the said decision is taken by him without undue influence and coercion.

In view of these facts and circumstances, we remand this case to the Court of Additional District Judge, Gurdaspur and direct the parties to appear before him for the purpose of recording the statement of the appellant-husband by way of video conferencing and the respondent-wife who is available in India in person. It is pertinent to mention that while the statement of the appellant is recorded by way of video conferencing, the father of the husband-appellant and his Advocate would remain present with

the Presiding Officer, who will identify the appellant-husband. After recording the statement of the appellant-husband, the court would make it part of the record and pass an appropriate order much less a decree for dissolution of marriage by way of mutual consent.

Parties are directed to appear before the Additional District Judge, Gurdaspur, on 28.03.2019.

It is further directed that the said Presiding Officer would hold the video conferenceing as early as possible and pass the necessary order, in accordance with law.

Registry is directed to send copy of this order to the District & Sessions Judge, Gurdaspur for necessary compliance.

Dasti as well.

Petition stands disposed of.

Record of this court be also sent to the learned District Judge for compliance through Special Messenger.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

08.03.2019

pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No