

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 95 of 2023(O&M)

Date of Decision:11.01.2023

Simranjeet Kaur

.....Appellant

Versus

Gurbax Singh

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. I.S.Kooner, Advocate
for the appellant.

Mr. Adarsh Dubey, Advocate
for the respondent.

LISA GILL, J(Oral).

This appeal has been filed by the appellant-wife for setting aside order dated 13.12.2022, passed by the learned Family Court, Hoshiarpur, whereby petition under Section 13-B of the Hindu Marriage Act, (for short 'the Act'), filed by the appellant and the respondent-husband has been rejected on the ground that the petition has been filed prior to one year of the parties living separately.

Brief facts necessary for adjudication of the matter are that petition under Section 13-B of the Act, was filed by both the husband and the wife seeking a decree of divorce by mutual consent. It is stated in the petition attached as Annexure A-1 that marriage was solemnized between the parties on 26.02.2020 at village Balala, Hoshiarpur, as per Sikh Rites. Parties, it is stated cohabited as husband and wife in the matrimonial home up to 07.03.2020. Husband went abroad on 07.03.2020 and the wife proceeded to her parental home. The parties remained on talking terms through telephone and social media till August 2020, but due to

temperamental differences, they decided to separate from each other. It is stated that they have not cohabited since 07.03.2020 and are living separately since then. It is further stated that strenuous efforts were made for reconciliation between the parties and resumption of their matrimonial ties. Even with intervention of respectables, reconciliation between the parties was not possible and the parties ultimately decided to get the marriage dissolved by way of decree of divorce by mutual consent.

Petition under Section 13-B of the Act, was accordingly filed. Statements of parties at first motion were recorded on 16.03.2021, copies of which are attached alongwith as Annexure P-2. Statements at second motion were also recorded on 21.09.2021, attached along with as Annexure P-3. However, learned Family Court, Hoshiarpur, on 13.12.2022, dismissed the petition under Section 13-B of the Act, while observing that severance of matrimonial ties did not take place on 07.03.2020 when the husband went abroad as the wife continued to live in the matrimonial home even in the absence of the husband and both of them remained in touch with each other through phone and social media and in-fact the wife proceeded to leave the matrimonial home for her parental home only on 01.09.2020. Therefore, separation between the parties could be taken only from 01.09.2020 and not 07.03.2020 when the husband left the country. As the petition had been filed on 16.03.2021, period of one year was not complete, thus petition was dismissed as not maintainable.

Aggrieved therefrom, present appeal has been filed by the appellant-wife. However, respondent-husband through his Special Power of Attorney, Jarnail Singh, is represented by Mr. Adarsh Dubey, Advocate. Power of attorney filed in Court today is taken on record subject to just exceptions. Learned counsel for the respondent submits that the respondent-

husband is also aggrieved of dismissal of petition under Section 13-B of the Act and has no objection if impugned decision dated 13.12.2022, is set aside.

Learned counsel for both the wife and the husband submit that till date the parties are living separately and their differences are irreconcilable. It is reiterated that despite strenuous efforts, reconciliation between the parties was not possible. It is submitted that pursuant to filing of petition under Section 13-B of the Act on 16.03.2021, statements of the parties at first motion were recorded on 16.03.2021 and their statements at second motion were recorded on 21.09.2021. Both the parties have reiterated that due to temperamental differences, they are unable to reconcile and resume cohabitation. Learned Family Court, Hoshiarpur, it is submitted has dismissed the petition under Section 13-B of the Act, on a hyper technical ground and without advertence to the factual matrix of the case. It is submitted that impugned order was passed much later on 13.12.2022, therefore even, if it is accepted that separation of parties is to be taken from 01.09.2020, the requisite period had elapsed at that time. Therefore, it was open to the learned Family Court, Hoshiarpur, to have considered the factual aspect on that date itself rather than dismiss the petition on technicalities. It is submitted that the respondent is abroad and filing of a fresh petition shall lead to innumerable difficulties leading to greater delay in the process of the parties moving forward in their lives. Learned counsel for the appellant as well as the respondent pray that this appeal be allowed.

Heard learned counsel for the parties.

Filing of petition under Section 13-B of the Act by both the parties before the learned Family Court, Hoshiarpur, is a matter of record. It is further not denied that statements of the parties at first and second motion

were recorded on 16.03.2021 and 21.09.2021, respectively. Copies thereof have been duly attached with this appeal as Annexure A-2 and A-3 respectively. The parties have reiterated that they are living separately since 07.03.2020.

It is to be noted at this stage that even if the separation between the parties is taken from 01.09.2020, as on the date of passing of impugned order dated 13.12.2022, statutory period had indeed elapsed. Both the parties have affirmed their intention to dissolve matrimonial ties. They seek to move on in their lives. Therefore, taking a pragmatic view we aside the impugned order dated 13.12.2022, passed by the learned Family Court, Hoshiarpur.

Keeping in view the peculiar facts and circumstances of the case, it is directed that the parties themselves or through their respective power of attorney holders, shall appear before the learned Family Court, Hoshiarpur, on 31.01.2023. Learned Family Court, Hoshiarpur, is at liberty to again interact with the parties in person or through Video Conferencing to ascertain the factum of the amicable and mutual decision of the parties to dissolve their marriage and their continued resolve to part ways. Necessary and appropriate orders be thereafter passed by the learned Family Court, Hoshiarpur in accordance with law.

Appeal is accordingly disposed of.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

January 11, 2023.

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.