

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-107-2015 (O&M)
Date of Decision: 09.02.2023

HARI CHAND
&

..... Appellant(s)

NITU BALA

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Inderjit Sharma, Advocate
for the appellant.

Mr. Narinder Kumar Vadhera, Advocate
for the respondent.

LISA GILL, J.(Oral)

This appeal has been filed by the appellant-husband challenging judgment dated 01.12.2014, passed by learned District Judge, Gurdaspur, whereby husband's petition under Section 13 of the Hindu Marriage Act, 1955 (for short the Act), has been dismissed.

Marriage between the parties had been solemnized on 20.01.1999. A child was born out of this wed-lock in September, 2003 but he unfortunately did not survive the delivery. Due to differences arising between the parties, petition under Section 13 of the Act was filed by the appellant-husband, which was dismissed vide impugned judgment dated 01.12.2014, passed by the learned District Judge, Gurdaspur.

It is stated that during pendency of this appeal, the matter has been amicably resolved between the parties. They have decided to part ways with the appellant depositing a sum of ₹12,65,000/- with the respondent-wife as full and final settlement of all her claims - past, present and future including permanent alimony, maintenance etc.

Application seeking conversion of petition under Section 13 to one under Section 13-B of the Act was allowed by the Co-ordinate Bench on 29.11.2022. Statements of the parties at first motion were recorded on 29.11.2022 itself. It is duly recorded in the statements at first motion that a sum of ₹12,65,000/- would be handed over by the appellant to respondent-wife and minor son as full and final settlement of all claims - past, present and future. Demand draft of ₹2,50,000/- and a cheque of the same amount i.e. ₹2,50,000/- was handed over to the respondent-wife on 29.11.2022. It was further agreed that remaining amount of ₹7,50,000/- in favour of the minor son would be handed over in the shape of FDR at the time of recording statement of parties at second motion and that thereafter no claim would sustain qua the appellant-husband. It was further agreed that custody of the child would remain with the respondent-wife. It was further undertaken by the parties that they would not initiate any proceedings against each other in future.

The matter was adjourned to 19.12.2022 for recording of statement of parties at second motion. Cheque of ₹2,50,000/- issued in favour of the respondent-wife could not be encashed. Time was sought on behalf of the appellant on 19.12.2022 to make good the rest of the payment. Demand draft dated 11.01.2023 for a sum of ₹2,50,000/- was handed over to the respondent-wife by the appellant on 13.01.2023. It was stated that sum of ₹7,50,000/- had been transferred to the account of the respondent-wife for conversion to FDR in favour of the minor child. Statements of the parties at second motion were recorded on 13.01.2023 in respect to the terms of settlement arrived at between them. Keeping in view the facts of the case where the parties have been living apart since 15.04.2010 and there

being no possibility of any rehabilitation of matrimonial ties despite earnest efforts being made, the statutory period of six months for recording of the statement at second motion indeed stands waived off. Non-waiver of the same would only have prolonged the agony of the parties and prevented them from moving on in their lives.

Parties in their statements at second motion recorded on 13.01.2023 reiterated the settlement arrived at between them and categorically stated that settlement has been arrived at out of their own free will and volition without any pressure, coercion or undue influence from any quarter. They further reiterated their statements recorded at first motion while submitting that they sought grant of decree of divorce by mutual consent and that both of them would withdraw any litigation - civil or criminal, which may have been initiated by them against each other and furthermore they would not resort to any further litigation with each other. The matter was, however, adjourned at request of learned counsel for the parties on the ground that requisite FDR in favour of the minor child could be prepared after credit of the amount in the account of the respondent-wife. The matter was accordingly adjourned for today i.e. 09.02.2023.

Learned counsel for the parties submit that amount of ₹ 7,50,000/- was duly credited and the same has been converted to FDR in favour of the minor son namely, Master Karamjit Singh, for a period up to 01.02.2027 i.e. the date on which he attains majority. The respondent, it is further submitted undertakes to withdraw the execution petition, if any, which is stated to be pending before the learned Family Court within two weeks.

Keeping in view the facts and circumstances as above, it is clear that there is no possibility whatsoever for resumption of matrimonial ties between the parties who were married on 20.01.1999 and have been living apart since 15.04.2010. The appellant as well as the respondent have categorically stated that the settlement has been arrived at out of their own free will and volition without any pressure, coercion or undue influence from any quarter. The settlement between them appears to be genuine and no ground whatsoever has been pointed out before us to decline the decree of divorce as prayed for.

Keeping in view the above, petition under Section 13-B of the Hindu Marriage Act, 1955, is allowed. Marriage solemnized between the parties is dissolved by way of mutual consent under Section 13-B of the Act. The parties shall remain bound by the terms and conditions of the compromise dated 13.09.2022. Decree sheet be prepared accordingly.

Appeal as well as pending miscellaneous applications, if any, stand disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

09.02.2023
Sunil

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No