

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

FAO-1731-2024 (O&M)
Date of Decision: 25.04.2024

JASPREET SINGH

...Appellant

Versus

KARAMJIT KAUR

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Sukhmeet Singh, Advocate
for the appellant.

HARSH BUNGER, J.

By way of present appeal, the appellant (Jaspreet Singh) seeks setting aside of order dated 08.02.2024 passed by the Court of learned Principal Judge, Family Court, Camp Court, Baghapurana, Moga; whereby the petition filed by the appellant and his wife namely, Karamjit Kaur (respondent, herein) under Section 13-B of the Hindu Marriage Act, 1955 (in short "the 1955 Act"), seeking divorce by way of mutual consent, has been dismissed on account of withdrawal of consent by respondent herein, before recording of statements of parties on second motion.

2. Briefly, the marriage between the appellant-Jaspreet Singh and respondent-Karamjit Kaur, is stated to have been solemnized on 20.02.2019 as per Sikh rites and ceremonies at village BurjHariKa, Tehsil Jaitu, district Faridkot and out of the said wedlock, one female child, namely Harveer Kaur, aged about 3 years, was born. It appears that due to differences between the parties, they started living separately from 21.07.2021 and

eventually, with the intervention of Panchayat and relatives, a compromise was effected on 14.06.2023. Upon this, the petitioner withdrew the petition filed under Section 9 of the 1955 Act and thereafter, a joint divorce petition by way of mutual consent under Section 13-B of the 1955 Act came to be filed by both the parties before the concerned Court at Baghapurana, Moga.

3. Para no.6 of petition filed under Section 13-B of the 1955 Act, reads as under :-

“6. That the petitioners have mutually agreed with the help of respectable persons of the society as well as relatives and decided to dissolve the marriage with their own free will and with mutual consent. As per compromise dated 14.06.2023, the petitioner no.2 did agree to return Rs.1,60,000/- paid by party no.1 to the party no.2 at the time of marriage in question. The party no.2 also did agree to return the dowry articles like Bullet Motorcycle, AC and Washing Machine etc. to the party no.1. It is also settled between the parties that the minor child Harveer Kaur will remain in custody of party no.1 and the party no.2 will never claim her custody in future, nor the property of party no.2 will be claimed by party no.1 or said child Harveer Kaur nor any kind of legal action in this regard will be initiated by party no.1 or above said child Harveer Kaur in future. As per subsequent settlement of the parties, above said amount of Rs.1,60,000/- along with articles like Bullet Motorcycle and AC etc. will be returned by party no.2 to party no.1 on the next day of the first statement in present divorce petition.”

4. It appears that on 16.05.2023, the appellant had returned the *stridhan* of the respondent herein, including Rs.1,60,000/- and a receipt dated 16.05.2023 (Annexure A-5) was duly executed by the respondent,

which reads as under :-

“ RECEIPT

Today on 16.05.2023, I Atma Singh Brar resident of BurjHariKa, Tehsil Jaitu, Distt. Faridkot have receipt Istridhan of my daughter Karamjit Singh i.e. Bullet Motorcycle, washing machine, A.C., LCD, Sofa set 7-Seater, Double bed, Press, one iron petti, Almirah, Juicer, Blender (Madhani) Cooker, Dressing Table, Hand Blender, Rs.1,60,000/- in cash, from Jaspreet Singh son of Gurcharan Singh resident of near Gurudwara Sahib Bambiha Bhai Tehsil Baghapurana, Distt. Moga and receipt has been written at the spot, so that it can be used at relevant time. Date: 16.05.2023.

Sd/- Gurcharan Singh

Sd/- Karamjit Kaur

Ex-Sarpanch

Sd/- Buta Singh

Bambiha Bhai Singh

Sd/- Inderjit

Sd/- Sarabjit Singh

Sd/- Atma Singh”

5. It transpires that thereafter, the statements of the parties on first motion were recorded on 06.07.2023 wherein the respondent-wife stated that as per the settlement, she has received a sum of Rs. 1,60,000/- from the appellant.

6. Thereafter, the matter was fixed for 08.02.2024 for recording of statements of parties on second motion.

7. It appears that on the 08.02.2024 the respondent (Karamjit Kaur) made a statement before the Family Court that she does not want to proceed with the present case and wants to withdraw her consent and petition thereof.

8. Upon considering the matter, the learned Principal Judge, Family Court, Camp Court, Baghapurana, Moga, vide impugned order dated 08.02.2024, dismissed the divorce petition filed under Section 13-B of the

1955 Act, on account of withdrawal of consent by respondent (Karamjit Kaur) before recording of statement of parties on second motion.

9. In the afore-mentioned circumstances, the appellant has filed the present appeal before this Court.

10. Learned counsel for the appellant submits that the learned Court below has erred in law and fact in dismissing the petition under Section 13-B of the 1955 Act, without considering the fact that the matter has been compromised between the parties and in pursuance thereof, a settlement deed dated 14.06.2023 was executed. It is submitted that the appellant had complied with the conditions of the deed/settlement as he has paid Rs.1,60,000/- to the respondent and he has also returned all the articles as per the settlement, which is evident from the receipt dated 16.05.2023 (Annexure A-5). Furthermore, it is contended that the appellant has also withdrawn the petition under Section 9 of the 1955 Act. It is further submitted that the respondent has wrongly withdrawn her consent, therefore, in the given circumstances, the learned Court below ought to have dissolved the marriage. It is also stated that now the respondent- wife has filed petition under Section 12, The Domestic Violence Act, 2005 to harass and humiliate the appellant-husband.

11. It is also the contention of the learned counsel for the appellant that once the respondent-wife had executed a settlement deed with appellant-husband after accepting the terms and conditions thereof and agreed to seek divorce by way of mutual consent then she was precluded from withdrawing her consent. Accordingly, it is prayed that the impugned order be set aside and the necessary directions/order be issued/passed for dissolving the marriage between the parties.

12. We have heard learned counsel for the appellant and perused the paper-book with his able assistance.

13. Upon considering the present matter, it is observed that the issue as sought to be raised by the appellant in the present appeal i.e. once the parties have entered into a settlement for dissolving the marriage by filing a petition under Section 13-B of the 1955 Act, by way of mutual consent, then one of the parties is precluded from withdrawing the consent; is no more *res integra*. Similar issues have been considered and decided by the Hon'ble Apex Court in ***Smt. Sureshta Devi v. Om Parkash, 1992 AIR (Supreme Court) 1904, SmrutiPahariya v. Sanjay Pahariya, 2009(2) RCR (Civil), Hitesh Bhatnagar v. DeepaBhatnagar, 2011 AIR (Supreme Court) 1637***; wherein it has been held that the most important requirement for grant of divorce by mutual consent is free consent of both the parties and only on the continued mutual consent of the parties, a decree of divorce under Section 13-B of the 1955 Act can be passed by the Court. It was held that it is the mutual consent of the parties, which gives the Court a jurisdiction to pass a decree of divorce under Section 13-B of the 1955 Act. Accordingly, mutual consent of the parties was held to be a *jurisdictional fact*.

14. It is further borne out from the above referred judicial pronouncements in the case of ***Smt. Sureshta Devi*** (supra), ***SmrutiPahariya*** (supra) and ***Hitesh Bhatnagar***(supra) that one of the parties may withdraw their consent at any time before passing of the decree by way of mutual consent under Section 13-B of 1955 Act. It is well established that the basic purpose of provisions of Section 13-B (2) of the 1955 Act, is to give an opportunity to the contesting parties to re-think over their decision to get separated.

15. In the instant case, appellant (Jaspreet Singh) alongwith respondent (Karamjit Kaur) filed a divorce petition by way of mutual consent under Section 13-B of the 1955 Act. The statements of the parties on first motion were recorded and the matter was fixed for 08.02.2024 for recording of statements of parties on second motion, but on the said date the respondent made a statement before the family court that she wants to withdraw her consent. Therefore, keeping in view the above referred legal position, once the respondent (Karamjit Kaur) withdrew her consent for divorce by way of mutual consent, the Court below lost its jurisdiction to pass a decree of divorce under Section 13-B of the 1955 Act.

16. We have also considered the contention of the appellant that once the respondent had entered into a settlement dated 14.06.2023 with the appellant and consented for seeking divorce by way of mutual consent, then the respondent was precluded from withdrawing her consent, especially when the appellant has already acted upon the terms of the afore-said settlement dated 14.06.2023; however, we do not find any merit in the same. Firstly, the appellant has not placed on record the settlement deed dated 14.06.2023 so as to show as to what terms of the settlement have been complied with by him to his detriment and what irreversible prejudice has been caused to him. Secondly, the only submission made by the counsel for the appellant is that the appellant has returned the articles to the respondent and also an amount of Rs.1,60,000/- has been paid by him. However, it is noticed that the afore-said articles and the amount of Rs.1,60,000/- is the part of *stridhan* which was given by the parents of the respondent at the time of the marriage, as would be evident from para No.6 of the petition filed under Section 13-B of the 1955 Act (as extracted

here-in-above) and also the receipt (Annexure A-5). As regards *stridhan* property, the Hon’ble Supreme Court in the case of **Smt. Rashmi Kumar vs Mahesh Kumar Bhada, 1999(2) RCR (Crl.) 43**, observed as under :-

“10. It is thus clear that the properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof.”

In view of the above, the stand of the appellant that he has acted upon the settlement by returning the *stridhan* so as to preclude the respondent from withdrawing her consent; cannot be accepted.

17. Be that as it may, the appellant, if so advised, may avail his remedies in accordance with law.

18. In view of the above discussion, we do not find any illegality or perversity in the impugned order dated 08.02.2024, passed by learned Principal Judge, Family Court, Camp Court, Baghapurana, Moga. Resultantly, finding no merit in this appeal, the same is dismissed.

19. All pending application/s (if any) shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

April 25, 2024
gurpreet

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