

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

141

CR-3996-2023 (O&M)

Date of Order:05.02.2024

Naresh Kumar

.Petitioner

Versus

Rajni

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Gupta, Advocate, for the petitioner.
Mr. Sushil Jain, Advocate, for the respondent.

ANIL KSHETARPAL, J

1. The unfortunate litigation between the husband and wife on account of marital discord has been pending for the last 5 years. The parties are residing separately from November, 2011. The respondent-wife is taking care of the only child i.e. a daughter, aged about 15 years. In 2019, the wife filed a petition under Section 13 of the Hindu Marriage Act, 1955, for dissolving the marriage by grant of a decree of divorce. The petitioner, who was respondent before the Family Court was proceeded against ex-parte on 19.08.2021. He filed an application for setting aside the same which was allowed on 15.03.2023. Thereafter, he was again proceeded against ex-parte on 08.09.2022 and the said order was set aside on 06.07.2023.

2. On 19.01.2023, the Family Court passed the following order:-

“Respondent is ex-parte in this petition and his application for recalling the order dated 08.09.2022 was pending, however, on previous date of hearing, both the parties, who are wife and husband have amicably resolved their disputes and have agreed to take divorce by way mutual consent after due reconciliation of this court. Joint statement of the parties in this regard was

recorded.

However, today it is pointed out by the petitioner and her counsel that the respondent is not signing the petition for divorce by way of mutual consent, as got drafted by her in pursuance of their settlement. When asked respondent states that some terms of settlement were not recorded in their statement in court on 11.01.2023. Petitioner has vehemently denied the same.

From perusal of the settlement dated 11.01.2023 recorded before this court, it is evident that all the terms over which the parties have consented, in-fact were recorded. This court has specifically got it mentioned in their joint statement recorded in the court that the petitioner shall ensure meetings of the child with her father. However, today respondent is adamant and saying that he has drafted a petition for divorce by mutual consent and now petitioner wife is not agreeing to disclosure about whereabouts of the child and her further education up-dates.

Respondent has been advised to think again over his decision of backing out of the settlement now, as all the terms of their settlement have already been recorded as the settlement is for their better life as well as that of child, who is suffering a lot due to disputes of her parents. This court even asked the child to try to build up the relationship with his father. She is aged about fifteen years and was in-fact not willing to meet her father, but per persuasion of this court on previous date of hearing, she has agreed to meet her father and has also agreed to remove all the grievances from her mind against her father. The respondent was further apprised that his such a behaviour of now backing out of the settlement would in-fact leave a permanent scar in the psyche of child. However, he is not ready to file a petition for divorce by

way of mutual consent by repeatedly saying the same thing that since his wife is not agreeing to disclose about the whereabouts of the child and her further education up-dates, he would not sign the petition. The petitioner wife, on the other hand states that he is intentionally making lame excuses and is now trying to back out of the compromise.

Separate statement of petitioner as well as respondent has been recorded. Respondent has even refused to sign the statement recorded today and was shouting in loud voice in court. He was advised to behave properly in the court otherwise his improper and unparliamentary behaviour in the court would warrant a contempt reference by this court. Since, he has refused to sign his statement, a specific note in this regard has been mentioned under his statement.

Keeping in view all these facts and circumstances that today on account of unparliamentary behaviour of respondent and on account of his adamancy, the parties could not file a petition for divorce by way of mutual consent, as earlier agreed between them, it is hereby ordered that necessary inference against the respondent shall be drawn at appropriate stage in this proceeding.

Since, amicable settlement is not possible today due to the fact that respondent has backed out of the same, proceedings are now adjourned to 08.02.2023 for hearing arguments on the application seeking to recall the order dated 08.09.2022.”

3. Thereafter, the parties agreed to dissolve their marriage by mutual consent. The joint petition under Section 13-B of the Hindu Marriage Act, 1955, was filed, and in the first motion the statements of the parties were recorded on 15.05.2023.

4. On 02.06.2023, the court passed the following order:-

“Petitioner No.2 is avoiding to appear before this court to make his statement of second motion and he is not willing to take divorce.”

5. It may be noted here that the petitioner no.2 in a petition filed under Section 13-B of the Hindu Marriage Act, 1955, was the husband (petitioner herein). On 31.05.2023, he was again proceeded against ex-parte. This time the application filed for setting aside the ex-parte order has been dismissed taking into account the conduct of the petitioner. It has been observed by the Family Court that the petitioner (respondent before the Family court) is hell bent to linger upon the proceedings and even he has not filed his written statement to the petition under Section 13 of the Hindu Marriage Act, 1955, during four years. It has been brought to the notice of the court that ex-parte evidence has already been recorded, and the case is now fixed for arguments.

6. On a court question, the learned counsel representing the petitioner submits that the petitioner now wishes to reside with the respondent. He further submits that on 31.05.2023, the petition filed under Section 13-B of the Hindu Marriage Act, 1955, was wrongly withdrawn by the wife and the petitioner could not appear as he was under a wrong impression that the petition filed under Section 13-B of the Hindu Marriage Act, 1955, is now fixed for 16.11.2023. The argument of the learned counsel representing the petitioner is not factually correct. On 02.06.2023, the court has recorded that the husband is avoiding to appear before the court to make statement of second motion. In these circumstances, the wife was left with no choice but to withdraw the petition under Section 13-B of the Hindu Marriage Act, 1955.

does not find it appropriate to interfere with the order passed by the Family Court. However, the petitioner shall be at liberty to appear before the Family Court on the date already fixed. However, there is no occasion to relegate the petitioner to the same position as on 31.05.2023.

8. Dismissed accordingly.

February 05, 2024
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :YES/NO
Whether reportable :YES/NO