



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

FAO-M-220-2017 (O & M)
Reserved on: 15.07.2024
Pronounced on: 26.07.2024

AJINDER KAURAppellant

Versus

SHARANPREET SINGHRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Appellant in person.

Mr. Anupam Sharma, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. One Sharanpreet Singh/respondent-husband herein filed on 09.02.2015, a Hindu Marriage petition bearing No. HMA/143/2015, before the learned Additional District Judge, Family Court, Amritsar, for the dissolution of his marital ties with his wife one Ajinder Kaur, through a decree in the said regard becoming passed. The said petition was filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the HMA').
2. Through a decision made, on 06.05.2017, on the petition (supra), the said petition became allowed, leading to a judgment and decree becoming passed, whereby the marriage solemnized between the parties, became dissolved, thus on the ground of desertion and cruelty.

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the appellant-wife to make an appeal thereagainst, through hers instituting the instant appeal before this Court.

4. During the pendency of the instant appeal, the parties settled their matrimonial dispute and agreed to dissolve their marriage by way of mutual consent. Accordingly, vide order dated 05.09.2019, as made by this Court, the instant appeal became disposed of. The relevant part of the said order is extracted hereinafter.

*“Admittedly, the matrimonial dispute has been settled between the parties. They have agreed to dissolve the marriage by mutual consent. Learned counsel submit that the terms and conditions shall be reduced into writing and a joint petition shall be filed before the appropriate Forum for divorce under Section 13-B of the Act. Parties shall be at liberty to seek waiver of the statutory period in light of judgment of the Supreme Court in **Amardeep Singh Vs. Harveen Kaur, 2017 (3) S.C.C. (Crl.) 505.***

As no cause of action survives, we hereby dispose of the appeal. However, in case any cause of action survives, either party shall be at liberty to seek revival of the same. It is made clear that in case such an application for revival is moved, the appeal shall automatically stand revived.”

5. In pursuance to the aforesaid order, both the husband and wife filed a petition (Annexure A-2) under Section 13B of the HMA before the learned Principal Judge, Family Court, Rupnagar, wherebys they espoused for the dissolution of their marital ties, through the rendition of a mutual consent decree. Moreover, statements (1st motion) of both the parties were also recorded by the learned trial Judge, on 10.12.2019. The said statements are respectively enclosed in Annexure A-4 and in Annexure A-3. The said statements are ad verbatim

extracted hereinafter.

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(Statement of Dr. Ajinder Kaur age about 40 years wife of Dr. Sharanpreet Singh Goraya, resident of Kothi No. 4-A, Block-A, Sandhu Avenue, Chhehrata, Distt. Amritsar)

On S.A.

“I got married with Dr.Sharanpreet Singh Goraya petitioner No.1 on 9.7.2006 by way of Anand Karaj ceremony at Ranjit Avenue, Amritsar. After marriage, we lived together as husband and wife and from our wedlock, one female child namely Keerat Kaur Goraya was born who is living with me and shall remain with me. We could not adjust with each other due to temperamental differences. Because of our dispute, we started living separate for the last 10 years. There are no chances of reconciliation. Now we have decided to dissolve the marriage with mutual consent. All the matrimonial disputes have been amicably settled by us vide compromise deed Ex.C-1. Petitioner No.1 Dr.Sharanpreet Singh Goraya will pay Rs.40,00,000/- to me i.e. Rs.20 lacs to me and Rs.20,00,000/- to minor daughter Keerat Kaur in lieu of her past, present and future maintenance out of which I have received Rs.20,00,000/ today in court in the form two bank drafts No.755570 dated 4.12.2019 and No.755571 dated 4.12.2019 from petitioner No.1 in the name of minor Keerat Kaur Goraya as natural guardian and remaining amount of Rs.20,00,000/- will be paid at the time of final statements. Thereafter, nothing will be due against each other. Both the petitioners have received back their articles and will not file any case against each other. We will withdraw all the cases filed against each other. I will not claim any maintenance etc from petitioner No.1 Dr.Sharanpreet Singh in future for myself and on behalf of minor daughter Keerart Kaur including ancestral or self acquired property of petitioner No.1 Sharanpreet Singh Goraya. No other dispute is left. As there are no chances of reconciliation, therefore, our marriage may kindly be dissolved with mutual consent. I will withdraw the petition u/s 125 Cr.P.C pending in the court at Amritsar for 14.12.2019.”

(Statement of Dr. Sharanpreet Singh Goraya age about 40 years son of Raghbir Singh Goraya, resident of K.No. 2509, Phase VII Mohali, Distt. Mohali).

On S.A.

I got married with Dr.Ajinder Kaur petitioner No.2 on 9.7.2006 by way of Anand Karaj ceremony at Ranjit Avenue, Amritsar. After marriage, we lived together as husband and wife and from our

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wedlock, one female child namely Keerat Kaur Goraya was born who is living with petitioner No.2 Ajinder Kaur and shall remain with her. We could not adjust with each other due to temperamental differences. Because of our dispute, we started living separate for the last 10 years. There are no chances of reconciliation. Now we have decided to dissolve the marriage with mutual consent. All the matrimonial disputes have been amicably settled by us vide compromise deed Ex.C-1. I will pay Rs.40,00,000/- to petitioner No.2 Ajinder Kaur i.e. Rs.20 lacs to Ajinder Kaur and Rs.20,00,000/- to minor daughter Keerat Kaur in lieu of her past, present and future maintenance out of which I have paid Rs.20,00,000/- today in court in the form two bank drafts No.755570 dated 4.12.2019 and No.755571 dated 4.12.2019 to petitioner No.2 Ajinder Kaur and remaining amount of Rs.20,00,000/- will be paid at the time of final statements. Thereafter, nothing will be due against each other. Both the petitioners have received back their articles and will not file any case against each other. We will withdraw all the cases filed against each other. Petitioner No.2 Ajinder Kaur shall not claim any maintenance etc from me in future for herself as well as on behalf of minor daughter Keerat Kaur and will not claim any share from my ancestral or self acquired property. No other dispute is left. As there are no chances of reconciliation, therefore, our marriage may kindly be dissolved with mutual consent. Petitioner Ajinder Kaur shall withdraw the petition u/s 125 Cr.P.C pending in the court at Amritsar for 14.12.2019. I have accepted the compromise deed and it will be deemed to be a certificate of guardianship of the minor child and petitioner No.2 will be treated as sole guardian of the minor child for all intents and purposes.”

6. Thereafter, on 11.02.2022 one Ajinder Kaur/appellant-wife suffered a statement (Annexure A-5) before the learned Principal Judge, Family Court, wherebys she disclosed her intent to withdraw her consent as comprised in her first motion statement (Annexure A-3). The statement (supra) of Ajinder Kaur is ad verbatim extracted hereinafter.

“ Stated that I withdraw my consent to give the statement of second motion as I do not want to give divorce to the first party. I will return Rs. 20,00,000/- within 15 days, which I have received at time to statement of first motion. And I withdraw my

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petition.”

7. In view of the aforesaid statement, the learned Principal Judge, Family Court vide order dated 11.02.2022 (Annexure A-6), dismissed as withdrawn, thus the petition filed by the parties under Section 13B of the HMA, and, directed Ajinder Kaur/appellant-wife to return the amount of Rs.20,00,000/- within 15 days, to Sharanpreet Singh/husband respondent herein.

8. Faced with the above situation, the respondent-husband filed CM-4374-CII-2022, seeking therebys revival of the instant appeal, in view of the liberty assigned by this Court vide order dated 05.09.2019. Obviously he was led to do so, as he was a recipient of a decree, whereby his marital ties with the present appellant became dissolved. The said application vide order dated 21.04.2023, thus became allowed by this Court and therebys the instant appeal became revived. The relevant part of the said order is extracted hereinafter.

“During pendency of appeal filed by the appellant – wife challenging grant of decree of divorce to the respondent – husband by learned Family Court, Amritsar, matter was amicably resolved between the parties and appeal was disposed of on 05.09.2019 in terms of settlement. It is specifically observed in order dated 05.09.2019 that in case, any cause of action still survives, either of the party would be at liberty to seek revival of the appeal and in case such an application for revival is moved, appeal shall automatically stand revived.

Present application has been filed by the husband, seeking revival of the appeal on the ground that appellant had recorded her statement at first motion in the proceedings under Section 13B of the Hindu Marriage Act, retracted thereafter, leading to dismissal of said petition by the learned Family Court.

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Notice of the application was issued to the non applicant/appellant.

As per office report, appellant was reported to be deliberately avoiding service, affixation was carried out. Vide order dated 20.01.2023, concerned Senior Medical Officer was directed to ensure service upon the on-applicant/appellant as well as her presence in Court and the matter was adjourned for 17.03.2023.

Learned counsel for the applicant informs that the appellant had appeared on 17.03.2023 but the matter was not taken up as Special Bench did not convene.

Today, appellant is not present nor is there any representation on her behalf.

Keeping in view the facts and circumstances, appeal stands revived. Same be listed as per roster on 14.07.2023, at its original Number.

Parties to remain present in Court on the next date of hearing.

Concerned Senior Medical Officer to ensure presence of the appellant in Court on the next date of hearing.

Copy of this order be supplied to learned counsel for the State present in Court.”

INFERENCES OF THIS COURT.

9. For the reasons to be assigned hereinafter, this Court does not find favour with the order dated 11.02.2022 (Annexure A-6), passed by the learned Family Court concerned, whereby in view of the statement (supra) made by Ajinder Kaur, wherein, she exemplified her intent to withdraw her first motion statement and also refused to make her second motion statement, thus the learned trial Judge concerned, proceeded to dismiss as withdrawn, the joint petition filed by the petitioners under Section 13 B of the HMA. Imperatively, since the

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made on 21.04.2023, causing the revival of the instant appeal. Reiteratedly, the legal worth of the said order requires becoming determined.

10. The reasons for drawing the above inference, becomes sparked from the factum, that merely on the statement (supra), made by the appellant-wife, the order (supra) (Annexure P-6) became rendered, whereas, unless there were further pleadings suggestive, that the earlier made statement became engendered from the respondent practicing fraud or mis-representation or pressure upon her, besides only on an issue in respect thereof being struck and also evidence thereons becoming adduced and received by the learned trial Judge concerned, thereupon, the appellant one Ajinder Kaur rather was not required to be permitted to resile or withdraw from her first statement. Predominantly also when the said statement was made under oath.

11. The non recouring (supra) or the omission (supra) on the part of the learned trial Judge concerned, to delve into or decide, qua the legal effects qua non making(s) of the above pleadings by the appellant, post her making the first statement under oath, contents whereof are ad verbatim extracted hereinabove, whereby she echoed her intention to segregate her marital ties with the respondent, through the rendition of a decree of mutual consent nor also from the apposite pleadings, thus an issue being struck nor also evidence becoming adduced thereons. Resultantly, thereby the order dated 11.02.2022 (Annexure A-6), as passed by the learned trial Judge concerned, thus banked on the said resiling by Ajinder Kaur, whereby the joint petition



legal procedural fallacy (supra). Therefore, the vice of grossest non application of mind being made by the learned trial Judge vis-a-vis the necessity of adoption(s) of procedural mechanism (supra), but makes it to be ridden with the taint of a gross illegality besides with the vice of a material irregularity.

12. Predominantly also therebys, *prima facie*, the resiling of appellant from her first motion statement did make her amenable for being proceeded for perjuring herself.

13. Moreover reiteratedly, the order dated 11.02.2022 (Annexure A-6), as passed by the learned Family Court concerned, but amplifyingly reveals, that despite no pleadings (supra) ever existing nor obviously an issue becoming struck besides no evidence becoming received, yet the learned trial Judge concerned, ill permitting the appellant-wife to resile from her earlier made first statement on oath. Resultantly thereby the petition filed under Section 13 B of the HMA became ill dismissed as withdrawn.

14. On the other hand, *prima facie*, after the learned trial Judge concerned had issued notice upon the appellant for hers committing perjury, and within a week thereto response becoming meted, thus subsequently, she was required to be posting the joint petition cast under Section 13-B of the HMA, for therebys the parties making the second motion statement, whereafter, a decree of dissolution of their marriage by mutual consent, thus may have been passed. Tritely, when this Court through order (supra) had permitted the parties to file a joint petition under Section 13 B of the HMA, besides had granted liberty to

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contemporaneity to the makings of the first statement on oath, by the contesting litigants before the learned Family Court, the latter was required to abide with the said direction. Moreso, when the reason for the withdrawal of the appeal as directed against the decree of divorce becoming passed by the learned Family Court concerned, thus ensued from the parties intending to snap their matrimonial ties, through theirs making a joint petition under Section 13 B of the HMA. In sequel, when therebys the marriage inter-se the parties at *lis* become irretrievably broken down, therebys the Family Court concerned, was also required to be not permitting the present appellant one Ajinder Kaur, thus to resile from her first statement on oath and nor on the plank thereof, she was required to be making an order wherebys the said joint petition became dismissed as withdrawn.

15. It appears that though through order (*supra*), as became passed by this Court, thus liberty became granted to the estranged matrimonial couple thus to withdraw consent, but the said liberty cannot be extended to assigning any latitude or leverage to any of the parties to ill resile from their previously made statements on oath. The above reserved liberty has been thus abused. In other words, the said liberty was available to become recoured only prior to the making of first statements on oath on the petition filed under Section 13 B of the HMA but was not required to be recoured post the rendition of first statements on oath by any of the parties. Moreover, therebys the majesty of Court proceedings besides the efficacy of statements becoming rendered on oath rather would become ensured to be

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proceedings but is a dire necessity rather than the said imperative necessities becoming permitted to be ill breached through the makings of the order dated 11.02.2022 (Annexure -6).

16. Moreover though through an order made on 21.04.2023, upon, CM-4374-CII-2022, this Court ordered for the revival of the main appeal. However, since as above stated, rather through Annexure A-6, the learned trial Judge, hence ill permitted the appellant to resile, from her previously first statement rendered on oath, whereby she had purveyed her consent to segregate her marital ties with her husband, through the rendition of a decree of divorce by mutual consent, whereupons for reason (supra), the Annexure (supra) has been construed to be ingrained with a gross fallacy. Moreover, when Annexure P-6, is the pivot for the making of the order dated 21.04.2023 by this Court whereby the instant appeal became revived. Resultantly in the larger interest of justice, instead of proceeding to hear the appeal on merits. Contrarily, the effect of a gross pervasive fallacy, ingraining Annexure A-6, is that, rather this Court, irrespective of the revival of the instant appeal being made through order (supra), rather deems it fit and appropriate to pass a direction upon the appellant and the respondent, to record their respective personal appearance(s) before the learned Family Court, so that they make their second motion statement, whereby a decree segregating their marital ties by mutual consent may become lawfully rendered.

Final Order of this Court.

17. In aftermath, with the observation(s) aforesaid, the appeal

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(Annexure A-6), passed by the learned Family Court concerned is quashed and set aside. Further, the learned Family Court concerned is directed to restore the petition filed under 13B of the HMA to its original number and to subsequently proceed to lawfully decide the said petition but in view of the direction(s) aforesaid.

18. Further, the parties are also directed to cause their respective personal appearance(s) before the learned Family Court concerned for their recording their respective second motion statements.

19. No order as to costs.

20. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

26.07.2024

kavneet singh

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