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

FAO-5384-2024 (O&M)

Date of decision: November 22, 2024

Amanat Kaur

....Appellant

versus

Surinder Singh

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE ALOK JAIN**

Present:- Mr. Tejas Bansal, Advocate and
Mr. Sanjiv Kumar Aggarwal, Advocate for the appellant.

SUDHIR SINGH, J. (ORAL)

CM-20461-CII-2024

For the reasons given in the application, the same is allowed and delay of 25 days in filing the appeal is condoned, subject to all just exceptions.

Main case (O&M)

Challenge in the present appeal is to the order dated 28.08.2024 passed by learned Additional Principal Judge, Family Court, Sirsa (for short the 'Family Court'), whereby, an application filed by the appellant seeking dismissal of petition under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act'), was allowed, and the appellant was directed to return an amount of Rs.5,00,000/- to the respondent within one month.

2. In a petition under Section 13-B of the Act, seeking divorce by mutual consent, the first motion statement of the parties was recorded on 10.04.2023. Thereafter, the case was fixed for 11.10.2023 for recording of second motion statement, but the appellant did not appear before the Court. Later on, the appellant filed the aforesaid application, *inter alia*, seeking dismissal of the petition under Section 13-B of the Act. In the said application, the appellant had claimed gold ornaments as well as the amount of Rs.10,00,000/- in lieu of her *Istridhan*. It was further asserted by the appellant that after recording the first motion statement, she went to Canada on 11.04.2023, and asked for her documents from the respondent, but he threatened her. Thereupon, the appellant had filed a complaint against the respondent in Canada, and he was arrested on 25.04.2023 and charges were framed against him. It was further the case of the appellant that both the parties were in Canada and, therefore, she did not want to pursue the petition under Section 13-B of the Act.

3. The respondent contested the application and alleged that after recording of first motion statement, the appellant had filed a false case against him in Canada, but he was released on bail in the said case. It was asserted that the appellant deliberately chose not to appear before the Family Court at the time of recording of the second motion statement with a view to cheat the respondent as in terms of the first motion statement, she had received part of gold ornaments and Rs.5,00,000/- from him. The gold ornaments so received by the appellant were not given to her by her mother and rather the same were given by the family

of the respondent. It was further asserted that the respondent had every intention to honour the terms of the first motion statement, but it was the appellant, who had become dishonest.

4. As noticed above, the learned Family Court has allowed the application moved by the appellant and dismissed the petition under Section 13-B of the Act. However, the appellant was directed to return the amount of Rs.5,00,000/- to the respondent with a month,

5. Learned counsel appearing for the appellant has argued that the gold ornaments as well as the amount of Rs.10,00,000/- was to be given to the appellant by the respondent in lieu of her *Istridhan*. It is further argued that as the parties are living in Canada, the consent was withdrawn by the appellant so as to pursue her legal remedies in the said country. Thus, it is argued that the direction to return the amount of Rs.5,00,000/- is untenable.

6. We have heard the learned counsel for the appellant and have also gone through the impugned order.

7. The learned Family Court has found that when one of the parties had withdrawn the consent before recording the second motion statement, the divorce could not be granted by way of mutual consent and that the reason for the withdrawal of the consent was immaterial. It was further observed that no definite conclusion could be drawn from the conduct of the appellant that she had a *mala fide* intention from the beginning and that she had filed the petition just to grab the money from the respondent. It was further found that the ornaments received by the appellant were in the capacity of *Istridhan*, but the amount of

Rs.5,00,000/- was received by her towards her claim for permanent alimony and since she had withdrawn her consent, she was directed to restore the aforesaid amount to the respondent.

8. Still further, in para No. 3 of its order, the learned Family Court, has reproduced the first motion statement of the parties, wherein it was recorded that the amount of Rs.5,00,000/- has been received by her towards permanent alimony for past, present and future. Thus, we find that once, the said amount was received by the appellant-wife towards permanent alimony, she is liable to return such amount, upon withdrawal of her consent for the divorce by mutual consent. We do not find any patent illegality or perversity in the impugned order.

9. No other point has been urged.

10. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

11. Hence, the present appeal is dismissed.

12. Pending application(s), if any, shall stand disposed of.

(SUDHIR SINGH)
JUDGE

(ALOK JAIN)
JUDGE

November 22, 2024

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No