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

COC-5757-2025 (O&M)
Date of decision : 02.12.2025

Paras Arora

...Petitioner

Versus

Mehak

...Respondent

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Bhawesh Chaudhary, Advocate for the petitioner.

HARPREET KAUR JEEWAN, J. (Oral)

1. Prayer in the present petition is for initiation of proceedings against the respondent under the Contempt of Courts Act, 1971 (*for short, 'the Act'*) for alleged willful breach of the undertaking made before the Family Camp Court at Mukerian on 07.12.2023 (Annexure P-2) in HMA No.218 of 2023, filed under Section 13-B of the Hindu Marriage Act, 1955 (*for short, 'the HMA'*).

2. Referring to the decision by the Hon'ble Delhi High Court *Rajat Gupta and others Vs. Rupali Gupta and others (Delhi) (DB), 2018(2) DMC 376*, it is contended on behalf of the petitioner that the respondent-wife did not appear for recording of her statement in the second motion in the joint petition filed under Section 13-B of the HMA, as such, the respondent is liable to be punished under Section 10 & 12 of the Act.

3. I have considered the aforesaid submissions and perused the paper-book.

4. Initially, both the parties filed a joint petition under Section 13-B of the HMA. The statement of first motion was recorded



on 07.12.2023, whereby, the respondent-wife accepted the payment of Rs.6,50,000/- being 50% of the total amount towards past, present and future maintenance. The case was adjourned for second motion. As per the documents on the paper-book, the respondent-wife did not appear for recording of the second motion statement on various occasions, however, ultimately, the amount received by the respondent-wife has been returned to the petitioner-husband, which has been accepted by the petitioner in two installments. A sum of Rs.3,25,000/- was paid through cheque bearing No.362661 dated 14.03.2025 has been received by the petitioner as reflected in the order dated 13.03.2025, whereas the remaining amount of Rs.3,25,000/- was received by the petitioner vide cheque No. 362664 dated 31.10.2025, as reflected in order dated 09.09.2025 (Annexure P-5 colly.). After acceptance of the entire amount by the petitioner-husband, which he had initially paid to the respondent-wife, the petitioner under Section 13-B of the HMA was dismissed.

5. The larger Bench of the Delhi High Court in *Rajat Gupta and others (supra)* examined the question as to whether a party, which has under a settlement agreement decreed by a Court, filed a petition under Section 13-B of the HMA, fails to file or appear in the petition, can be held liable for contempt? The Court while observing that the waiting period prescribed in Section 13-B (2) of the HMA has been declared as directory in nature and not mandatory, held that the parties have the option of jointly approaching the Court for waiving the said waiting period, answered the question as under: -

“Answer: (a) The answer to Question (A) is yes. The distinguishing feature of Section 13B of the Act, 1955 is that it recognizes the unqualified and unfettered right of a party to



unilaterally withdraw the consent or reconsider/renege from a decision to apply for divorce by mutual consent, notwithstanding any undertaking given in any legal proceeding or recorded in any settlement/joint statement, in or outside the court, resulting in a consent order/decree, to cooperate with the other spouse to file a petition under Section 13B(1) or a second motion under Section 13B(2) of the Act, or both. Withdrawal of the consent even at the stage of the enquiry, as contemplated under Section 13B(2), is also in exercise of the right available to a party under the very same provision. In other words, the mutuality of the consent to divorce should commence from the stage of filing the First motion under Section 13B(1) and it should continue at the time of moving the Second motion under Section 13B(2) of the Act, till such time that the court completes the enquiry and a decree of divorce is finally passed. The said element of mutual consent is a sine qua non for passing a decree of divorce. This being the legal position, the defaulting party cannot be compelled to file or appear in the petition or motion or both, to obtain divorce by mutual consent.

(b) Any other view will not only impinge on the jurisdiction of the court which has an obligation under the Statute to undertake an independent enquiry before passing a decree of divorce by mutual consent, it will also encroach upon a statutory right vested in a party under Section 13B(2) of the Act and go against the very spirit of the provision, at the heart of which lies the right of a party to reflect/revisit and retract from its decision of going ahead for grant of divorce by mutual consent, during the cooling off period.

(c) At the same time, a defaulting party can be held liable for civil contempt on the ground of breaching the terms and conditions incorporated in an undertaking given to the court or made a part of a consent order/decree. In the event the aggrieved party approaches the court for initiation of contempt proceedings against the defaulting party for willful/deliberate breach of any of the terms and conditions of an undertaking/settlement agreement/consent order or a decree and takes a plea that as a consequence thereof, he/she has been placed in a disadvantageous position or has suffered an irreversible/grave prejudice, the court in exercise of its inherent powers of contempt, supplemented by the 1971 Act has the requisite jurisdiction to entertain the petition and direct restoration of status quo ante in every possible way. Besides directing the defaulting party to disgorge all the benefits/advantages/privileges that have/would have enured in its favour and restoring the parties to the position that was before they had arrived at such a



settlement/agreement/undertaking and/or before the consent order/decree was passed in terms of the settlement arrived at/undertakings recorded, the court has the discretion to punish the defaulting party for civil contempt, depending on the facts of a given case. Thus, contempt jurisdiction operates in a different field and is uninfluenced by the fetters imposed on a court under the Act of 1955. The only rider to the above is that no direction can be issued even in contempt proceedings to compel the defaulting party to give its consent for a decree of divorce by mutual consent, as it is opposed to the object, policy and intent of Section 13B of the Hindu Marriage Act.”

6. In view of the facts and circumstances of the present case, i.e. petitioner-husband had already received back and accepted the financial benefits from the respondent-wife, which were initially parted with by the petitioner-husband; and in view of the ratio of law laid down in *Rajat Gupta and others (supra)*, no case is made out for initiation of proceedings under the Contempt of Courts Act, 1971 against the respondent and as such, present petition is dismissed.

7. However, the petitioner may avail appropriate alternate remedy as per law, if so advised.

8. Pending miscellaneous applications, if any, shall stand disposed of.

02.12.2025

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[HARPREET KAUR JEEWAN]
JUDGE

Whether speaking / reasoned :

Yes

No

Whether Reportable :

Yes

No