

District Judge, Ferozepur, for deciding the appeals on merits, in accordance with law, after directing the appellants to file the certified copies of the decrees under appeal by obtaining the same from the trial Court. The parties have been directed to appear before the District Judge, Ferozepur, on October 12, 1985.

N.K.S.

Before, Pritpal Singh, J.

NACHATTAR SINGH,—Petitioner.

versus

HARCHARAN KAUR,—Respondent.

F.A.O. No. 10-M of 1985.

September 9, 1985.

*Hindu Marriage Act (XXV of 1955)—Section 13-B—Petition for divorce by mutual consent presented by the two spouses—Subsequent withdrawal of consent by one party—Whether envisaged by Section 13-B.*

*Held*, that a reading of sub-section (2) of Section 13-B of the Hindu Marriage Act, 1955 would show that the scheme of the section does not envisage withdrawal of consent by one party. The petition can be dismissed as withdrawn only if both the parties who had filed the petition together agree to withdraw the same. Six months after the date of presentation of the petition and not later than 18 months after the said date, if the petition is not withdrawn by both the parties, the Court has to satisfy itself after hearing the parties and after making such enquiries as it thinks fit, that the petition was in fact presented by both the parties to the marriage, that they have been living separately for a period of one year or more and that they have mutually agreed that the marriage should be dissolved. After both the parties have voluntarily consented to file the petition for dissolving the marriage by mutual consent and all the other conditions mentioned in sub-section (1) of Section 13-B of the Act are fulfilled, it will not be open to the party to withdraw the consent. (Para 2).

*First Appeal from the order of the court of the Additional Senior Sub-Judge, Jagraon, with powers of District Judge under Hindu Marriage Act, dated 6th February, 1985, dismissing the petition.*

G. S. Punia, Advocate, for the Appellant.

I. S. Vimal, Advocate, for the Respondent.

Nachattar Singh v. Harcharan Kaur (Pritpal Singh, J.)

JUDGMENT

*Pritpal Singh, J.*

(1) A petition under section 13-B of the Hindu Marriage Act, 1955, (hereinafter called 'the Act') for dissolution of marriage by a decree of divorce was presented by Nachhattar Singh and his wife Harcharan Kaur together on the ground that they have mutually agreed that the marriage should be dissolved. This petition was filed on July 24, 1984. The trial Court adjourned the petition to January 28, 1985, in view of sub-section (2) of section 13-B of the Act which envisages that the marriage can be dissolved in such proceedings not earlier than six months and not later than eighteen months after the date of the presentation of the petition. On January 28, 1985 the case was adjourned to February 6, 1985. On the adjourned date of hearing i.e. on February 6, 1985 the wife Harcharan Kaur made a statement that the petition be filed. Consequent upon this statement the trial Court dismissed the petition on the ground that one of the parties is not willing to the dissolution of marriage by mutual consent. The husband Nachhattar Singh has filed the present appeal against this order.

(2) The impugned order suffers from legal infirmity and is, therefore, unsustainable. Sub-section (2) of section 13-B of the Act is in the following terms:—

“(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averment in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

A reading of this sub-section would show that the scheme of section 13-B of the Act does not envisage withdrawal of consent by one party. The petition can be dismissed as withdrawn only if both the parties who had filed the petition together agree to withdraw the same. Six months after the date of the presentation of the

petition and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties, the Court has to satisfy itself, after hearing the parties and after making such inquiries as it thinks fit, that the petition was in fact presented by both the parties to the marriage, that they have been living separately for a period of one year or more and that they have mutually agreed that the marriage should be dissolved. If both the parties had voluntarily consented to file the petition for dissolving the marriage by mutual consent and all the other conditions mentioned in sub-section (1) of section 13-B of the Act are fulfilled, it will not be open to a party to withdraw the consent. In the present case without making an inquiry under sub-section (2) the trial Court has dismissed the petition as withdrawn which could not be done merely on the asking of one party.

(3) For aforesaid reasons, this appeal is allowed, the impugned order of the trial Court is set aside and the case is sent back to the trial Court to make inquiry envisaged by sub-section (2) of section 13-B of the Act and then decide the petition for divorce by mutual consent in accordance with law. The parties have been directed to appear before the trial Court on October 7, 1985. The records be sent to the trial Court immediately.

N.K.S.

Before, J. V. Gupta, J.

STATE OF PUNJAB,—Appellant.

*versus*

KARTAR SINGH AND OTHERS,—Respondents.

*Execution First Appeal No. 1374 of 1985.*

November 5, 1985.

*Code of Civil Procedure (V of 1908)—Section 144—Amount awarded by Collector for land acquired under the Land Acquisition Act—Said amount enhanced by District Judge on a reference under section 18 of the Act—State appeal filed against the order of enhancement made under section 18—Bond executed by the claimant stipulating that the enhanced amount would be re-paid in case the State*