

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO NO.M-80 OF 2012

DATE OF DECISION : 31.07.2012

Kusam Rani

...Appellant

Versus

Dalip Singh @ Deepak

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present : Mr. G.S.Verma, Advocate,
for the appellant.

Mr. Rajpal Singh, Advocate,
for the respondent.

RAJIVE BHALLA, J. (ORAL)

The appellant prays that judgment and decree dated 05.03.2012 passed by the Additional Civil Judge (Senior Division), Jalalabad (West) District Fazilka, rejecting the petition filed under Section 13-B of the Hindu Marriage Act (for short as 'the Act') for grant of divorce by mutual consent, may be set aside.

Counsel for the appellant submits that on account of bona fide error, the appellant made a statement, that raised an inference that parties had not been living separately, for the last one year. It is contended that if the appellant had made an error in her second statement recorded on 03.03.2012, the learned Trial Court should have called upon parties to clarify the error instead of dismissing the petition.

Counsel for the respondent-husband states that he does not contest the correctness of submissions made by appellant-wife and states that it is correct that they were residing separately, for a period of one year, before filing the petition for divorce.

The appellant and the respondent filed a petition for grant of divorce by mutual consent and appeared before the trial Court on

27.08.2011. The appellant as well as the respondent made separate statements that they have been living separately for the last more than one year. The petition was, thereafter, adjourned to 03.03.2012 to await expiry of the statutory period of six months. On 03.03.2012, the appellant made a statement that they have been living apart for the last 1-1¼ years. The trial Court, therefore, recorded a finding that as parties have not been living separately for a period of more than one year, they are not entitled to a decree of divorce by mutual consent.

We have heard counsel for the parties, perused the impugned judgment and are satisfied that the appellant made a bona fide error in her statement on 03.03.2012. In the petition for grant of divorce and in her first statement recorded on 27.08.2011, the appellant has taken a positive stand that parties have been living separately for the last more than one year. In this situation, the trial Court should have recalled the parties and recorded their separate statements, afresh, instead of dismissing the petition.

In view of what has been stated hereinabove, the appeal is allowed, the judgment and decree passed by the trial Court is set aside and marriage between Kusam Rani and Dalip Singh @ Deepak, is dissolved by grant of a decree of divorce, by mutual consent. Decree sheet be drawn accordingly.

(RAJIVE BHALLA)
JUDGE

31.07.2012
adhikari

(REKHA MITTAL)
JUDGE