

Divorce by mutual consent

Sr. No.	Title	Citation	Question involved	Held
1	Smruti Pahariya vs Sanjay Pahariya	CIVIL APPEAL NO. 3465 OF 2009 DOD : 11 May, 2009 (SC)	Preponement of proceeding u/s 13-B at back of one of the parties	<ul style="list-style-type: none"> • Held - A Court's proceeding must have a sanctity and fairness. It cannot be conducted for the convenience of one party alone. In any event, when the Court fixed the matter for a particular day, it could not pre-pone the matter on an ex-parte prayer made by one of the party and grant the decree of divorce on that day itself by treating the matter on the board in the absence of the other party. • This is a flagrant abuse of the judicial process. • On the question of how to ascertain continuing consent in a proceeding under Section 13B of the said Act. Further held – • There should be mutual consent when they move the Court with a request to pass a decree of divorce and there should be consent also at the time when the Court is called upon to make an enquiry, if the petition is not withdrawn and then pass the final decree.
2	Ravinder Kumar vs Rekha Rani	FAO No. 8318 of 2014 (O&M), DOD 12.02.2016 (P&H)	Qus: Where a party to a petition u/s 13-B HMA withdraws consent in second motion – Question of restitution of amount received as lump sum maintenance.	<ul style="list-style-type: none"> • Held - jurisdiction to make restitution is inherent in every Court and is to be exercised whenever the justice of the case so demands. A litigant cannot use the process of Court so as to surreptitiously obtain a benefit on the representation to do a certain act and thereafter retract from the representation that had been

				<p>given but at the same time retain the benefit by taking a different, changed and a contradictory stand.</p> <ul style="list-style-type: none"> wife having received an amount of Rs.6.25 lacs on the representation that she agrees to give divorce at the time of first motion of the proceedings of the joint petition but later on her refusal for divorce at the second motion, though legal, would necessarily imply that the benefit of Rs.6.25 lacs that she received on her representation for divorce is to be refunded and restored. Therefore, the amount which has been received by the appellant in consequence of the statements made at the first motion is liable to be restored to the respondent.
3	Jaspreet Kaur Dhaliwal vs Kulwinder Singh	FAO-M-492-2015, DOD 11.01.2016 (P&H)	Section 13-B HMA	<ul style="list-style-type: none"> Qus: Whether the parties can record statements in second motion through attorney? Held - where trial court did not doubt the bonafides of the parties or legality of the prayer for dissolution of marriage, to insist upon the personal presence of parties, particularly where parties admittedly reside abroad, would perpetuate injustice, wastage of time and money. In such circumstances trial court should not insist upon personal presence of the party to record statement in second motion.
4	Vikas Verma Vs Harpreet Kaur	2016 (1) Law Herald 688;	Appeal against dismissal of petition u/s 13-B HMA	<ul style="list-style-type: none"> Held - Where parties filed a petition for grant of divorce by mutual consent and

		Law Finder Id # 748984 (P&H)		recorded statements in first motion, and wife received Rs.3 lacs as permanent alimony, wife however withdrew her consent in her second motion compelling the District Judge to dismiss the petition, it was held that the aggrieved spouse cannot maintained an appeal against the dismissal order. The only remedy available is to file appropriate application before district judge praying for refund of alimony.
5	Punam Vs Naveen	2016 (1) RCR (Civil) 995; Law Finder Id # 739189 (P&H)	Annulment of decree of divorce my mutual consent	<ul style="list-style-type: none"> • Held – Decree of divorce my mutual consent passed by a court cannot be annulled by an assertion of any party later that the decree was meant to be sham for facilitating employment in a foreign county . • Proceeding of court cannot be brought under thick clouds of irreverence if a party knows what was stated in the court was meant to be untruth and not to be acted upon.
6	Deepak Singh Vs Pooja	2016 (2) RCR (Civil) 742; (P&H) Law Finder Id # 746959	Petition under Section 13-B – wife withdraws consent at second motion	<ul style="list-style-type: none"> • Held – petition u/s 13B is founded upon mutual consent. An adverse inference or inference of consent cannot be withdrawn against a party which refuses to make statement at second motion. • If the party that receives money retracts from mutual consent, such a party would be required to restitute the amount so received. • A duty is caste upon the court seized of such disputes to

				restore parties to the position on the date of filing the petition.
7	Ramola Mander Vs Charanjit Singh Mander	2015 (3) Law Herald 2556; Law finder Id # 702882 (P&H)	Whether absence of one of the parties to joint petition, should entail dismissal of the petition outrightly	<ul style="list-style-type: none"> • Held – where one of the party is absent during the course of second motion, the trial court should afford at least one opportunity to the party to appear for second motion before dismissing the joint petition as the same is moved jointly by the parties u/s 13B HMA.
8	P. Sunderraj Vs P Sarika Raj	AIR 2015 (P&H) 83; Law Finder Id # 667859	Waiting period of 6 months u/s 13-B HMA	<ul style="list-style-type: none"> • Held – the waiting period of six months from the presentation of the petition for divorce by mutual consent is mandatory and cannot be waived. • Family court granted divorce on the basis of compromise petition, by dispensing waiting period of six months – such an order is in violation of Section 13-B
9	Harinderpal Singh Vs Ramandeep Kaur	2015 (4) RCR (Civil) 210; Law finder Id # 667881 (P&H)	Divorce by mutual consent, trial court directed that minor daughter will retain lien over ancestral property of her father and grandfather	<ul style="list-style-type: none"> • Held – it is settled provision of law that unless parties are directed to address a particular issue arisen in the lis, no court can pass any direction affecting the interest of anyone or the other. • Trial court cannot traverse beyond mutual consent aggrieved between the party while passing decree u/s 13B. Trial court can pass order for maintenance u/s 25 and 26 only on agreed terms.
10	Mandeep Kaur Bajwa Vs Chetanjit Singh Randhawa	AIR 2015 (P&H) 160; Law Finder id # 708092	Condonation of period of one year u/s 14(1)	<ul style="list-style-type: none"> • Held – on a combined reading of Section 13-B and 14 it is clear that before filing a petition a period of one year should elapse from the

				<p>date of marriage.</p> <ul style="list-style-type: none"> The proviso to Section 14 (1) is an exception. The proviso can be exercised where the case is one of exceptional hardship to the petitioner or exceptional depravity on the part of the respondent.
11	Sakshi Vs Abinandan Sharma	2015 (2) RCR (civil) 876; Law Finder id # 654972 (P&H)	Condonation of period of one year u/s 14(1)	<ul style="list-style-type: none"> Held – Statutory period of one year u/s 14, can be condoned if the party are able to make out that it was a case of exceptional hardship to the petitioner or exceptional depravity on the part of the respondent.
12	Ashim Sethi Vs Meena Sethi	2015 (4) RCR (Civil) 807; Law finder id # 714432 (P&H)	Amendment of divorce petition to convert the same into consent petition under section 13-B	<ul style="list-style-type: none"> Held – though the law is well settled that amendment of plaint relates back to the date of filing the plaint. However, amended joint petition for divorce would be taken to be filed and effective from the date it is filed. Doctrine of relation back would not apply.
13	Pooja Deswal Vs Sagar Deswal	2014 (3) RCR (Civil) 539; Law Finder Id # 558008 (P&H)	Wavier of statutory period u/s 13-B	<ul style="list-style-type: none"> Held – court has not power to waive statutory period of six months referred to in Section 13-B or condoned the said period.
14	Rajwant Singh Bains Vs Kulwant Kaur Bains	2014 (3) PLR 320; Law Finder id # 554596 (P&H)	Non appearance of the party at second motion – appearance through power of attorney	<ul style="list-style-type: none"> Held – merely because wife did not appear in person at second motion, ought not be a ground to disentitled her for matrimonial relief. As per law party in a divorce petition can appear through power or attorney who is also a relation of the party. Statement can be recorded through power of attorney.
15	Gagan Sethi	2013 (1)	Withdrawal of consent on	<ul style="list-style-type: none"> Held - Withdrawal of consent

	Vs Shilpa Sethi	HLR 490; Law Finder Id # 428156 (P&H)	second motion	<p>on second motion by wife does not amount of making false statement or resiling from first statement so as to amount to cheating.</p> <ul style="list-style-type: none"> • There is no bar u/s 13-B for either of the party to withdraw consent on second motion. • Where the parties do not make statements at second motion no court can pass decree of divorce.
16	A.C. Mathivanan vs. B. Sathyabama	2016 SCC OnLine Mad 8884 – DOD: 03.08.2016	S.13-B(2) of the Hindu Marriage Act	<ul style="list-style-type: none"> • Sub-Section (2) of Section 13-B only wanted the Court to satisfy as to whether the marriage has been solemnized and that the averments in the petition are true. • In case the parties have been living separately one year before the initiation of joint petition for divorce and there was no scope for re-union, normally, the Court has no other option than to grant a decree of divorce • Court cannot enlarge the scope of an enquiry under Sub-section (2) of Section 13-B of the Hindu Marriage Act and act like a fact finding authority • once it is convinced that it would not be possible for the parties to live together and that they have opted to dissolve the marriage peacefully, the endeavour of the Court must be to grant a decree of divorce rather than compelling the parties to live separately even thereafter.