

**Raj Rani Vs. Roop Kumar**

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**Court :** Delhi

**Decided On :** Mar-12-1990

**Reported in :** 41(1990)DLT266; II(1990)DMC142; 1990(18)DRJ325

**Judge :** N.N. Goswamy, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 13B

**Appeal No. :** First Appeal No. 244 of 1989

**Appellant :** Raj Rani

**Respondent :** Roop Kumar

**Advocate for Pet/Ap. :** Sarvagya Sharma and; Maehswar Dayal, Advs

**Judgement :**

**N.N. Goswami, J.**

(1) This appeal by the wife is directed against the judgment and decree dated 7-10-1989 passed by the learned Additional District Judge, Delhi, whereby the marriage between the parties was dissolved under Section 13(B)(ii) of the Hindu Marriage Act.

(2) The admitted facts are that the parties were married at Delhi on 19-2-1988. They lived together for few days and parted company on March 7, 1988. Since

that date 'they have been living separately. Having realised that due to their temperament they could not live together they entered into an agreement to dissolve the marriage through Court. In the agreement it was provided that the same had been arrived at with the help and intervention of respectable and common well wishers. It was further provided that the parties will approach the Court and file a petition for divorce by mutual consent. It was also provided that a sum of Rs. 90,000.00 had been received by the appellant wife from the respondent in consideration of the articles of dowry, future maintenance due to the wife and also by way of expenditure on litigation etc. It is not disputed that this amount was duly received and the receipt executed by the appellant wife is also on record. Consequently as agreed the petition was filed which came up for hearing before the learned Additional District Judge on March 7, 1989. The parties made their statements and agreed to dissolve the marriage. Consequently after recording the statements the case was adjourned till after six months.

(3) After the period of six month the husband filed a petition under Section 13(B)(ii) of the Act wherein it was alleged that the appellant who had joined the applicant at the time of making the first motion had changed her mind to defraud and black-mail the applicant after receiving the sum of Rs. 90,000.00 from the applicant. Notice of the application was issued to the appellant wife. In the written statement she pleaded that she had made the statement under force and fraud was played on her. She denied the allegations that the parties had not been able to live together and that there was no cohabitation during that period. Statement of the appellant wife was recorded. In her statement she did not allege any fraud. In order to test the bona fide of the appellant the learned trial Judge had given her the opportunity to refund the sum of Rs. 90,000.00 received by her. She initially agreed that she would be refunding the amount but on the next date changed her mind and declined to do so. In her statement she admitted that her earlier statement was true and correct and that she had entered into agreement as was alleged by the husband. She also admitted having 'signed the agreement and the statement. She further admitted that the statement was recorded after making enquiry from her. She further stated that she did not want to return Rs. 90,000.00 which were received by her and she will do so only after observing the husband for five years while living with him.

(4) On consideration of the material on record the learned Additional District Judge came to the conclusion that the consent could not be withdrawn unilaterally and consequently he passed the impugned decree. By now it is well settled that the petition or consent given in a petition under Section 13(B)(1) of the Act cannot be withdrawn by one party unilaterally unless it can be shown that the consent was a result of force, fraud or undue influence. Reference in this connection can usefully be made to 'Smt. Jayashree Ramesh Londhe v. Ramesh Bhikaji Londhe' : AIR1984 Bom302 and a decision of this Court in 'Smt. Chander Kanta v. Hans Kumar and another', : AIR1989 Delhi73 .

(5) In the present case as I have already referred the appellant never alleged any fraud, force or undue influence. She rather admitted that she had made the statement voluntarily and had fully understood the statement. She also admitted having signed the agreement voluntarily and having received the amount of Rs. 90,000.00 . In this situation no error can be found with the impugned judgment and decree. Consequently the appeal is dismissed in limine.