

Punjab-Haryana High Court

Jasjit Saini vs Sanjeev Pal Singh Saini on 9 December, 2013

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.M-351 of 2013

Date of Decision: 09.12.2013

Jasjit Saini

..... Appellant

Versus

Sanjeev Pal Singh Saini

..... Respondent

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. Divanshu Jain, Advocate for the appellant.
Mr. Vivek Thakur, Advocate for the respondent.

S.S. SARON, J.

This appeal has been filed by the appellant-wife against the judgment and decree dated 10.10.2013 passed by the learned Additional District Judge, Chandigarh whereby the joint petition (Annexure A-1) filed by the parties seeking dissolution of their marriage by a decree of divorce by mutual consent in terms of Section 13-B of the Hindu Marriage Act, 1955 ('Act' - for short) has been dismissed.

The marriage between the parties was solemnized at Sector-21 Gurudwara, Chandigarh as per Sikh rites and ceremonies on 24.12.1995. The parties had two daughters namely Simran Saini aged 15 years and Smiti Saini aged 12 years. They are studying in class 10 and class 7 respectively in England. Both the daughters are living with the appellant- wife. The parties had agreed that the custody of the daughters shall remain with the appellant-wife. The Amit Kaundal 2014.01.10 15:53 respondent-husband, however, had a right to meet the I attest to the accuracy and integrity of this document Chandigarh daughters with prior intimation to the appellant. After marriage, the parties stayed in India till 2006. Thereafter they went to England in January, 2007. Their relations became strained after they went to England. They tried their best to adjust and compromise with each other for the sake of the children. However, despite best efforts, they could not adjust. There was complete incompatibility of temperament between them. Therefore, they mutually agreed that the marriage between them be dissolved by a decree of divorce. They had been living separate from each other since March, 2012. There was no dispute between the parties regarding dowry articles; besides, the appellant does not claim any maintenance and alimony from the respondent. They had no claim against each other. Accordingly, a joint petition (Annexure A-1) was filed by the parties seeking dissolution of the marriage between them by a decree of divorce in terms of Section 13-B of the Act. The parties appeared in the Court of the learned Additional District Judge, Chandigarh on

03.04.2013 and their respective statements (Annexure A-2 and Annexure A-3) were recorded at the first motion wherein they consented for grant of divorce.

The appellant-wife in her statement (Annexure A-2) inter alia stated that after marriage she along with her husband (respondent) went to Bombay where they stayed Amit Kaundaltogether for about a year after which they shifted to Jalandhar 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh where they stayed together for three-four years. Then they came to Panchkula. The appellant along with her family lived at Panchkula for six-seven years. During this entire period, the respondent was living with the appellant. He was working in Delhi and used to come to the family at weekends. Then they migrated to England in 2007. They had two daughters from the marriage namely Simran Saini who was born on 19.09.1997 and Smiti Saini who was born on 01.01.2001. Both the daughters were born at Chandigarh. The parties lived together in England for a period of about five years. Both the daughters were living in the care and custody of the appellant. The appellant came to India on 28.03.2013. They had been living separately since March, 2012. The appellant was residing at Beverley Mansion, Middlesex, U.K. while the respondent was living in Southall, Middlesex, U.K. There was no dispute about dowry articles. It is stated by the appellant- wife that she does not claim any alimony or maintenance from the respondent. They have been unable to live together due to temperamental differences. There was no understanding between them. Since March, 2012, they had never lived together and there had been no cohabitation between them. She had voluntarily given her consent to the petition for divorce without force, fraud or undue influence. The respondent could visit his daughters at any time. Both the Amit Kaundaldaughters would be staying with her. 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh The respondent-husband also made his statement (Annexure A-3) in which he inter alia stated that he had heard the statement of the appellant which he admits to be correct. It is further stated that the parties were married on 24.12.1995 at Chandigarh. They had been living separate from each other since March, 2012. He had voluntarily given his consent to the petition for divorce without force, fraud or undue influence.

After recording the statements of the parties on 03.04.2013, the case was adjourned to 07.10.2013 for recording statements of the parties at the second motion. On 07.10.2013 special powers of attorney of the parties were filed. In terms of the record that has been received, the appellant Jasjit Saini appointed her father Shri Gurbachan Singh son of Shri Partap Singh resident of House No.3155 Sector 21-D, Chandigarh as her lawful attorney for the purpose of recording her consent at the second motion. The respondent Sanjeev Pal Singh Saini appointed his father Shri Iqbal Singh son of Shri Gurbaksh Singh resident of House No.384, Sector-7, Panchkula as his lawful attorney for giving his consent at the second motion. The statements of the special attorneys of the parties were recorded.

Gurbachan Singh father and special attorney of the appellant Jasjit Saini stated that Jasjit Saini is his daughter. Amit KaundalShe was residing in House No.1, Beverley Mansion, Wellington 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh Road South Hounslow, Middlesex TW45HE, England. She filed a petition under Section 13-B of the Act. He was putting in appearance at the stage of second motion. She had left for England after appointing him (Gurbachan Singh) Special Attorney authorizing him to make a statement. He had brought the

original special power of attorney of his daughter, who had executed it in his favour. It bears his signatures also. The power of attorney was tendered in evidence and exhibited as Ex.P-2. It is further stated that there was no possibility of reconciliation between the parties and the marriage may be dissolved by mutual consent.

Similarly Iqbal Singh father and Special Attorney of the respondent Sanjeev Pal Singh Saini made a statement stating that Sanjeev Pal Singh Saini was his son. He was residing in Southall, Middlesex, England. He (Sanjeev Pal Singh) filed the petition under Section 13-B of the Act. He (Iqbal Singh) was putting in appearance at the stage of second motion. Sanjeev Pal Singh had left for England after appointing him as his Special Attorney authorizing him to make the statement, which he was making. He had brought the original Special Power of Attorney of his son executed in his favour. It bears his signatures also. The power of attorney was tendered in evidence and exhibited as Ex.P-1. It is stated that there was no possibility of reconciliation between the parties and the marriage may be dissolved by mutual consent. 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh consent.

The case on 07.10.2013, was adjourned to 08.10.2013 on which date it was adjourned to 10.10.2013. The learned Additional District Judge on 10.10.2013 dismissed the joint petition of the parties and aggrieved against the same, the appellant Jasjit Saini has filed the appeal. Notice of motion was issued on 14.11.2013. Mr. Vivek K. Thakur, Advocate for the respondent accepted notice on behalf of the respondent. He filed his 'vakalatnama' signed by Shri Iqbal Singh father and Special Attorney of the respondent. The 'vakalatnama' and photocopy of the Special Power of Attorney were taken on record. The case was adjourned for today for hearing and the trial Court record was also requisitioned.

We have heard learned counsel for the parties and with their assistance perused the record.

The joint petition of the parties has been dismissed by the learned Additional District Judge primarily on the ground that the learned Judge came to the conclusion that there was collusion between the parties. It may be noticed that the parties had been living in England for the last five years and they were settled there. They came to India in the month of March, 2013 and on 03.04.2013 they filed a joint petition seeking dissolution of the marriage between them by mutual consent. They stated that they had been living separately for more than a year. It was noticed by the learned Additional District Judge that after appearing at the stage of first motion both the parties again left for England. Before leaving they executed powers of attorneys on 06.04.2013. The question posed by the learned Additional District Judge was that when the parties were settled in England and living there for the last five years; besides, living separately there for one year why the petition could not be filed in England itself. The learned trial Judge observed that the first reply came that the respondent-husband would have to pay maintenance had the petition been filed in England. It is further observed that it was next stated that question of permanent residence is involved. Had the parties got divorced in England one or the other petitioner might not have been allowed to stay in England. It was also taken into consideration that there was no explanation as to why the parties had not appeared at the stage of second motion. Besides, no provision had been

made for the maintenance of two daughters of the parties. Moreover, once the parties mutually agreed for divorce, may be in England payment or non-payment of maintenance would have been left to their discretion. It was further noticed that if the petitioners get divorce from the Court of Additional District Judge, Chandigarh, a question that would arise is whether they would not be disclosing this fact while staying in England Amit Kaundalso as to avoid that one or the other petitioner may not be sent 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh back. The said circumstances according to the learned Additional District Judge showed that there was some sort of collusion between the parties. It was held that the act and conduct of the parties did not satisfy the conscious of the Court that they had come out with truthful averments. Accordingly, the parties were held not entitled for dissolution of their marriage by mutual consent and their joint petition was dismissed.

It may be noticed that primarily the learned Additional District Judge declined the petition on the ground that (1) the petition could have been filed in England and if the parties had been residing there it should have been filed there. (2) There was no provision for maintenance of the daughters of the parties. (3) Had the parties got divorce in England, one of the parties may not be allowed to stay in England and the fact whether they had got divorce in India may not be disclosed to the concerned authorities in England.

Insofar as the question regarding filing of the petition in England is concerned, it may be noticed that the marriage between the parties was solemnized at Sector-21 Gurudwara, Chandigarh within the territorial jurisdiction of the District Court at Chandigarh. Section 19 of the Act provides for jurisdiction of the Court to which a petition under the Act including a petition for divorce may be presented. It is Amit Kaundalinter alia envisaged therein that every petition under the Act 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh shall be presented to the District Court within the local limits of whose ordinary civil jurisdiction, the marriage was solemnized. Therefore, the marriage having been solemnized at Chandigarh, the petition could be presented within the local limits of the District Court at Chandigarh and this has been done by the parties. The petition seeking dissolution of the marriage between the parties, was presented in the District Court at Chandigarh, within whose local limits the marriage between the parties had been solemnized. The fact that the parties had been living away from Chandigarh would not in any manner come in the way for filing the petition within the territorial jurisdiction of the Court where marriage was solemnized. Therefore, the ground taken by the learned Additional Judge regarding the fact as to why the petition was not filed in England when the parties were living there is not tenable. The statutory provisions provides for filing a petition for divorce by mutual consent in the District Court within the local limits of which the marriage was solemnized, there can be no estoppel against the statute.

The other ground that the respondent would have to pay maintenance had the petition been filed in England, is inconsequential. It has been mutually agreed by the appellant that she does not claim any maintenance for herself from the respondent. Therefore, in case the appellant does not claim Amit Kaundalany maintenance for herself, it is not for the Court to fix the 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh payment of maintenance for her. The matter is amongst the parties and in case one party agrees not to claim maintenance for herself and

the other consents not to pay the same, the Court is not thrust an order for payment of maintenance on them. Insofar as the daughters of the parties are concerned, they are not a party to the lis and question regarding their maintenance is not to be adjudicated upon. It has been agreed that the custody of the minor daughters shall remain with the appellant and in case the daughters of the parties who are at present minors have any right or claim against either of the parties towards maintenance or alimony, they can avail their remedy in accordance with the law through their next friend and guardian in terms of the provisions of Order XXXII of the Code of Civil Procedure, 1908. Therefore, the rights of the minor daughters of the parties except for their custody being with the appellant wife is not being adjudicated upon. In case the custody of the minor daughters in terms of the settlement between the parties is to remain with the appellant-wife then it is for her to maintain and look after the minors and being the mother, it is expected that she would look after and maintain them, besides, provide for all the necessities within her means. There is no ground to disbelieve that she would not look after the minors or maintain them. Therefore, there is no ground to non suit the parties for the Amit Kaundal dissolution of the marriage between them especially when they 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh have filed the petition for grant of divorce by mutual consent.

The other consideration that has weighed with the learned trial Judge for dismissing the joint petition for divorce by mutual consent is that there was no explanation as to why the parties had not appeared at the second motion. In this regard it may be noticed that the parties had appeared through their respective attorneys. The appellant-wife appeared through her father and attorney Shri Gurbachan Singh. The Special Power of Attorney in favour of Gurbachan Singh is proved and exhibited on record as Ex.P2. Similarly Shri Iqbal Singh father and special attorney appeared on behalf of respondent-husband. The power of attorney executed by the respondent in favour of his father is proved and exhibited on record as Ex.P1. In both the power of attorneys (Ex.P2 and Ex.P1) it is stated by the respective parties that they had filed a petition for grant of divorce by mutual consent under Section 13-B of the Act which was pending in the Court of learned Additional District Judge, Chandigarh titled 'Jasjit Saini and Sanjeev Pal Singh Saini' in which after the filing of the said petition, the statements of the respective parties had been recorded on 03.04.2013 and the case had been adjourned for 07.10.2013 for recording their final statements. It is stated by both of them that they were living in U.K. at the respective addresses as are mentioned in Amit Kaundal the Powers of Attorneys and they would not be able to come 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh back to Chandigarh for final statement on the adjourned date or any other date to which the case is further adjourned. Therefore, they had appointed their respective fathers as lawful attorneys for themselves and on their behalf to represent them before the said Court or to any other Court to which the case may be transferred/marked for disposal. In terms of the said powers of attorneys it has been inter alia provided and authorized by the parties for their attorneys to appear as witness and depose about the facts and circumstances of the case in their place either on oath or on affidavit. The respective power of attorneys namely Gurbachan Singh for the appellant and Iqbal Singh for the respondent appeared in the Court of learned Additional District Judge, Chandigarh on 07.10.2013 and made their statements stating that there was no possibility of reconciliation between the parties and the marriage may be dissolved by mutual consent. There is in fact no ground not to accept the said statements of the attorneys of the parties for the parties themselves as an attorney can act on behalf of the principal. Section 1-A of the Power

of Attorney Act, 1882 defines that "Power- of- Attorney" includes any instruments empowering a specified person to act for and in the name of the person executing it.

In Black's Law Dictionary 6th Edition (at page 1171), Amit Kaundal power of attorney has been defined as under:- 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh "Power of attorney. An instrument in writing whereby one person, as principal, appoints another as his agent and confers authority to perform certain specified acts or kinds of acts on behalf of principal. Complaint of Bankers Trust Co. C.A.Pa., 752 F.2d 874,

885. An instrument authorizing another to act as one's agent or attorney. The agent is attorney in fact and his power is revoked on the death of the principal by operation of law. Such power may be either general (full) or special (limited)."

Section 2 of the Power of Attorney Act reads as under:-

"2. Execution under power- of- attorney.- The donee of a power- of- attorney may, if he thinks fit, execute or do any instrument or thing in and with his own name and signature and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers- of- attorney created by instruments executed either before or Amit Kaundal after this Act comes into force." 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh A power of attorney, therefore, is a formal instrument by which the person executing who is the principal empowers another to represent him or act for him for certain purposes. The person in whose favour the power of attorney has been executed is known as the attorney and he acts for and on behalf of the principal. Besides, an attorney is competent to give any evidence in a Court on behalf of the principal in respect of those aspects which are in his personal knowledge. The Hon'ble Supreme Court in Man Kaur (dead) by LRs v. Hartar Singh Sangha, (2010) 10 SCC 512 considered the case where a power of attorney was examined in a case of sale transaction to prove readiness and willingness of the plaintiff to perform the contract. It was held that a power of attorney who had no personal knowledge cannot be examined in place of the plaintiff. The legal position as to who could give evidence with regard to the matters involving personal knowledge were enumerated as follows:-

(a) An attorney-holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney-holder has done any act or handled any transactions, in pursuance of the Amit Kaundal power of attorney granted by the principal, he may 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh be examined as a witness to prove those acts or transactions. If the attorney-holder alone has personal knowledge of such acts and transactions and

not the principal, the attorney-holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney-holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney-holder, necessarily the attorney-holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorised managers/attorney- holders or persons residing abroad managing their affairs through their attorney-holders.

(e) Where the entire transaction has been conducted through a particular attorney-holder, the principal Amit Kaundal has to examine that attorney-holder to prove the 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh transaction, and not a different or subsequent attorney-holder.

(f) Where different attorney-holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney-holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his "state of mind" or "conduct", normally the person concerned alone has to give evidence and not an attorney- holder. A landlord who seeks eviction of his tenant, on the ground of his "bona fide" need and a purchaser seeking specific performance who has to show his "readiness and willingness" fall under this category. There is however a recognised exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or "readiness and willingness". Examples of such attorney-holders are a husband/wife Amit Kaundal exclusively managing the affairs of his/her spouse, 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad." (emphasis added) The above propositions as enunciated by the Hon'ble Supreme Court particularly proposition (g) shows that where the law requires or contemplates the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. However, a recognized exception to this requirement is where all the affairs of a party are completely managed, transacted and looked after by an attorney who may happen to be a close family member, it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a

father/mother exclusively managing the affairs of a son/daughter living abroad.

In the present case, the fathers of both the respective parties have appeared and stated that there was no possibility of reconciliation between the parties and the marriage may be Amit Kaundaldissolved by mutual consent. The said statements of the 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh power of attorneys of the respective parties is only a reiteration of the statements initially made by the parties themselves. Both the parties were abroad and their fathers can be said to be exclusively managing their affairs while they were abroad. Both the attorneys are fathers of the respective parties and are as such close relatives. Therefore, the state of mind or conduct though normally is to be of the person concerned alone, however, an exception can be applied to the general rule as has been carved out by the Hon'ble Supreme Court, in the facts and circumstances of the present case.

A Single Bench of this Court in Navdeep Kaur v. Maninder Singh Ahluwalia, AIR 2010 P&H 90, considered the question as to whether it was mandatory for the parties to appear in person in Court at the time of filing of the petition for divorce by way of mutual consent and also at the time of second motion or the attorney could be authorized to appear. In the said case, after initial litigation between the parties a compromise was reached at and a joint petition for divorce was filed by them. The respondent-husband therein being abroad was represented by his father as attorney while the appellant-wife appeared in person. At the initial stage, the statement of the appellant-wife was recorded and on behalf of the husband his father as attorney got his statement recorded. Similar was the position at the time of second Amit Kaundalmotion. The learned trial Court dismissed the petition 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh observing that the husband had not appeared in person and divorce by mutual consent could not, therefore, be granted. This Court after referring to the case law and the provisions of Order III of the Code of Civil Procedure which provides for appearance of the parties through recognized agent or a pleader held that once the Court was not doubting the genuineness of the contents stated in the petition for divorce by way of mutual consent and one of the parties was represented by an attorney who was none else than the father of the respondent-husband and had a fiduciary relationship with him could not be expected to act against the interest of his son. Such a petition, it was held could not be rejected merely on the ground that one of the parties did not appear in person. It was held that the provisions of Section 13-B of the Act cannot be read to mean that personal appearance of the parties is mandatory. Appearance of parties would include appearance through duly constituted attorneys. The paramount thing which was required to be considered by the learned court below it was held was the correctness of the contents of the petition filed and also to see that the consent of either of the parties had not been obtained by way of force, fraud or undue influence. Parties were not required to be called in court only to see their faces. However, in the absence of the parties, where the attorney appears, the courts have to Amit Kaundalbe more cautious and vigilant in recording its satisfaction 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh about the consent in terms of the provisions of the Act. It may depend upon the facts of a case, considering who was appearing as attorney. The husband being abroad and represented by his father as attorney was held to be valid and divorce by mutual consent was granted. The judgment and decree of the Court below was set aside. Therefore, in the present case merely because parties had not appeared in person at the time of second motion would indeed be no ground to disentitle

them for the matrimonial relief of divorce.

The Delhi High Court in *Neelima Chopra v. Anil Chopra* 1987 (1) Hindu Law Reporter 187 held that in a case of divorce by mutual consent, the presence of the parties in Court is not mandatory and they are not bound to be present in Court. The parties can file affidavit or authorize some one to make statement testifying to the correctness of the petition. If the parties stated about their marriage and the position not to live together then the Court can record its satisfaction and can grant divorce.

The position, therefore, is that where a state of mind or conduct of the person is to be ascertained in a proceeding for grant of divorce, normally the parties should appear in person and their evidence alone is to be considered and not that of a person holding an attorney. However, the exception to the rule is that where a close relative appears for the parties Amit Kaundal acting as his or her attorney and is in a position to state and 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh depose as regards the state of mind of the principal and the affairs of the principal are managed by the attorney, then such statements of an attorney on behalf of the principal can be accepted and matrimonial relief granted. The exception is all the more applicable where one of the parties or both are unable to appear for justifiable reasons like living abroad and their affairs are managed by a close relative who is acting as an attorney. In such a case the state of mind of the parties can be gathered from the statements made by the attorneys. It would depend on the facts and circumstances of each case.

In the present case as has already been noticed that the parties had appeared in the first motion and given their consent. Thereafter they had authorized their respective fathers to make a statements on their behalf. The fathers of the respective parties acting as attorneys for their children stated that there was no chance of reconciliation between the parties. The parties themselves did not give any instructions to the respective attorneys to make statements other than that as has been stated by them. Therefore, from the facts and circumstances and the fact that the parties had appeared at the first motion, it can be said that their attorneys had validly acted on their behalf and there is no reason not to accept the statements of the parties made by them on behalf of their principals.

Amit Kaundal Insofar as the observation of the trial Court as to 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh whether the parties would not be disclosing the fact of the divorce while staying in England and avoiding that one of them may not be sent back, it may be noticed that both the learned counsel for the parties have referred to the photocopies of the passports of the parties containing the visas which are on record. In the visas it is mentioned 'indefinite leave to remain in the U.K'. The said passports which are on record can be taken into consideration as these are public documents and photostat copies of the same can be read in evidence in view of Section 14 of the Family Courts Act, 1984 which reads as under:-

"14. Application of Indian Evidence Act, 1872 .- A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872."

The Family Courts Act is an act to provide for establishment of Family Courts with a view to promote conciliation and secure settlement of disputes relating to marriage and family affairs and for matters connected therewith. Section 14 as referred to above softens the rigours of the Evidence Act in its applicability to family dispute which Amit Kaundalincludes matrimonial dispute. Therefore, the passports which 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh are on record can be looked into and noticed for the purpose of reaching the conclusion as to the status of the parties which provide for indefinite leave to remain in U.K. As such it cannot be said that the fact where the parties would disclose that they have got divorced by mutual consent is relevant or not. Even otherwise, a decree of matrimonial Court is a judgment in rem in terms of Section 41 of the Evidence Act, which relates to relevancy of certain judgments in probate etc. jurisdiction. Section 41 of the Evidence Act reads as under:-

"41. Relevancy of certain judgments in probate, etc., jurisdiction.--A final judgment,

order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof--

that any legal character which it confers accrued at Amit Kaundal 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh the time when such judgment, order or decree came into operation; that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person; that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property."

The said provision, therefore, envisages that a final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. The judgment in the present case would be a judgment in exercise of the matrimonial jurisdiction and, therefore, it is to be Amit Kaundalconclusive proof of the legal character of the parties that it 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh confers or takes away or that may accrue or cease at the time declared in the judgment. The same determines the rights and status of the parties as to their matrimonial status of being married or divorced. Therefore, also it cannot be said that the parties would be suppressing

the fact of their having been obtained divorce by mutual consent.

For the foregoing reasons, the appeal is allowed, the judgment and decree of the learned Additional District Judge, Chandigarh dismissing the joint petition for divorce by way of mutual consent, is set aside and the joint petition of the parties seeking dissolution of their marriage by mutual consent is allowed and the marriage between the parties stands dissolved by a decree of divorce by way of mutual consent of the parties. There shall be no order as to costs.

(S.S. SARON) JUDGE (NAVITA SINGH) JUDGE 09.12.2013 A.Kaundal Amit Kaundal 2014.01.10 15:53 I attest to the accuracy and integrity of this document Chandigarh