

Neutral Citation No. - 2024:AHC-LKO:58692-DB
A.F.R.

**High Court of Judicature at Allahabad
(Lucknow)**

**Reserved on : 05.07.2024
Delivered on : 29.08.2024**

Court No. - 2

Case :- FIRST APPEAL No. - 131 of 2012

Appellant :- Kuldeep Singh

Respondent :- Smt. Yashoda Devi

Counsel for Appellant :- Asif Hasan, Rajendra Prasad Tiwari, Shweta Singh

Counsel for Respondent :- Ambika Prasad, Narvind Kumar Singh, R.K. Yadav

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

(Per : Om Prakash Shukla, J.)

- (1) Heard Shri Rajendra Prasad Tiwari, learned Counsel representing the appellant/husband. Although, the respondent/wife has filed her counter-affidavit, however, none appeared on behalf of the respondent/wife at the time of final hearing.
- (2) The appellant/husband has filed the present appeal under Section 19 of the Family Courts Act, 1984 read with Order XIII Rule 1-A of the Code of Civil Procedure, 1908 against the judgment and order dated 01.08.2012 passed by the Additional Principal Judge, Family Court, Lucknow, in Original Suit No. 1411 of 2005 : *Smt. Yashoda Devi Vs. Kuldeep Singh*.

- (3) Apparently, in the aforesaid suit, the respondent/wife had sought declaration of the judgment/decreed dated 08.07.2005 passed in Original Suit No. 32 of 2005 filed under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as 'Act, 1955') by which divorce on the ground of Mutual Consent was granted, to be a nullity. Vide judgment and order 01.08.2012, the learned Family Court, while allowing the suit, has set-aside the judgment and decree dated 08.07.2005 and has held it to be a nullity, consequently, appellant/husband has been prohibited from marrying another woman unless he takes divorce from respondent/wife in accordance with law.
- (4) The factual matrix relevant to decide the present appeal can be captured from the records as herein below :-
- (i) The appellant/husband married the respondent/wife on 05.05.1996 in accordance with Hindu rites and rituals. After marriage, respondent/wife was residing at her husband's/in-laws' house situated at village Haluni, Post Sangla Koti, district Pauri Garhwal, Uttranchal (now Uttarakhand). Out of their wedlock, two male children were born on 21.07.1997 and 05.07.2000, respectively.
- (ii) Appellant/husband was serving in the Indian Army. He was transferred and posted at Lucknow on his personal request

on 25.04.2003. As per the appellant, he was allotted an official accommodation at Lucknow on 01.11.2004. He then brought the respondent/wife and his younger son to Lucknow in November, 2004 and lived together at Lucknow till January, 2005. As there were irreconcilable differences between the two, they decided to part ways amicably, therefore, on 06.01.2015, a suit under Section 13-B of the Act, 1955 for dissolution of marriage on ground of mutual consent was filed before the Principal Judge, Family Court, Lucknow, which was registered as Original Suit No. 32 of 2005 and was decreed on 08.07.2005.

- (iii) After passing of the decree, as per the respondent/wife, the appellant/husband took her to her in-laws' house where she stayed for two days and then he left her at her parents' home at Dehradun on the premise that as soon as he arranges a house at Joshimath where he had been posted, he will take her with him but, he never came back. The respondent/wife and her father went to her in-laws' house to inquire, who, ill-treated them, and also disclosed that their son (appellant herein) had divorced her at Lucknow. It is then that respondent/wife came to know about the divorce. She then came to Lucknow with her father, met an Advocate, and inquired about the case in the Family Court, Lucknow and then filed Suit No. 1411 of 2005, as referred above.

- (iv) The case of the respondent/wife is that while staying with the appellant/husband, she was made to sign blank papers and photographs which, as per the appellant/husband, were necessary for his service related matters and for this very purpose, she was again made to sign papers and photographs after six months and was also taken to a place which, according to the appellant, was his office. By practicing deceit and fraud not only on the respondent but also on the Court, he was able to obtain a decree of divorce for cancellation of which the subsequent suit was filed.
- (v) Suit No. 1411 of 2005 was filed on 10.10.2005 by the respondent/wife within about three months of the decree in the earlier suit dated 08.07.2005.
- (vi) Notice was issued to the husband/defendant in Suit No. 1411 of 2005. In response, husband/defendant put in appearance and filed his written submission, denying the averments made in the aforesaid suit filed by the wife/plaintiff.
- (vii) On the basis of pleadings and documents, the learned Family Court framed following issues in Suit No. 1411 of 2005 filed by the wife/respondent:-

- i. क्या मूल वाद संख्या 32/05 कुलदीप
बनाम यशोदा देवी अंतर्गत धारा-13 बी हिन्दू

विवाह अधिनियम-1955 में दिनांक 8.7.05 को अपर प्रधान न्यायाधीश, पारिवारिक न्यायालय, लखनऊ के द्वारा पारित किया गया निर्णय एवं आज्ञाप्ति, प्रस्तुत वाद में दिये गये कारणों के आधार पर शून्य घोषित किये जाने योग्य है ?

ii. क्या मूल वाद संख्या 32/05, अंतर्गत धारा 13 “बी” हिन्दू विवाह अधिनियम 1955 में पारित किया गया विवाह विच्छेन की आज्ञाप्ति प्रतिवादपत्र में दिये गये कारणों से शून्य घोषित किए जाने योग्य है ?

iii. क्या वादिनी किसी अन्य अनुतोष को पाने की अधिकारिणी है। यदि हाँ तो क्या ?

(viii) The wife/respondent, in support of her case, examined herself as P.W.1 and her father, namely, Shri Bhagirath Singh as P.W.2. No documentary evidence was adduced by the wife/respondent.

(ix) The husband/appellant examined himself as D.W.2 and filed documentary evidence along with list of documents (marked as C36/1) viz. (i) original train ticket for the journey dated 23.11.2004 from Kotdwara to Lucknow (marked as C36/2); (ii) original train ticket for the journey dated 18.01.2005 from Lucknow to Najibabad (marked as C36/3); and (iii) photocopy of accommodation allotment letter dated 11.11.2004 issued to the appellant/husband (marked as

C36/4). Besides these documents, no other documentary evidence was filed by the appellant/husband.

- (x) On an application, the trial Court summoned the original record of Suit No. 32 of 2005, which is tagged with the records of Suit No. 1411 of 2005.
 - (xi) On a consideration of the facts pleaded and evidence led in the light of the issues framed, the learned Family Court has decided issues no. 1 and 2 in favour of the respondent/plaintiff and has decreed the suit.
- (5) Shri Rajendra Prasad Tiwari, learned Counsel representing the appellant/husband would urge that respondent-wife, after having validly agreed to file a suit for divorce by mutual consent under Section 13-B of the Act, 1955, had signed the memorandum of Original Suit No. 32 of 2005 as well as affixed her photograph on it on the basis of which the judgment and decree dated 08.07.2005 was passed by the learned Family Court at Lucknow in Original Suit No.32 of 2005 and as such, respondent/wife could not resile from the same and seek its cancellation. Moreso, according to the learned Counsel, the Family Court has failed to appreciate the fact that there is nothing on record to belie the statement recorded by the learned Family Court prior to the passing of consent decree in earlier

suit filed under Section 13-B of the Act, 1955 and also there is nothing on record to substantiate the allegation of collusion, misrepresentation and fraud on the part of the appellant, hence the findings recorded by the learned Family Court in the impugned judgment and decree dated 01.08.2012 are not based on any evidence rather they are based on surmises and conjecture.

- (6) Learned Counsel representing the appellant also urged that the respondent/wife is 10th Class pass and is also quite educated, therefore, her allegation of being lured in signing the earlier plaint in the suit filed under Section 13-B of the Act, 1955 on the alleged pretext of service record, is absolutely concocted and bald allegation. According to the learned Counsel, in any case, the subsequent Original Suit No.1411 of 2005 seeking to declare the earlier judgment and decree dated 08.07.2005 as nullity by the respondent/wife, was not maintainable before the Family Court as it was not open for the Family Court to exercise jurisdiction declaring the decree passed earlier by it under Section 13-B of the Act, 1955 a nullity. Elaborating his submission, learned Counsel urged that though the issue relating to jurisdiction of the Family Court for passing of a decree for nullifying a decree passed earlier by it in earlier proceedings on the basis of mutual consent between the parties, is a very important issue, however, the learned Family Court

has lost sight of the fact in not framing this issue while adjudicating the matter. Thus, he prays that the impugned judgment and decree dated 01.08.2012 is liable to be set-aside.

(7) Although, no oral submission was led by the respondent/wife, however, in the counter affidavit filed on behalf of the respondent/wife, she has reiterated the allegations made in the plaint and also stated that her husband had played fraud on her in seeking divorce under Section 13-B of the Act, 1955 and as such, learned Family Court had rightly declared the judgment and decree dated 08.07.2005 a nullity and had rightly allowed the suit filed by her, hence appeal is liable to be dismissed. Respondent/wife had also stated that learned Family Court had framed the issues based on the pleadings of the parties, which were never objected by the appellant before the learned Family Court nor any application in this regard was filed by him before the Family Court, hence at this stage such an objection as raised by the appellant is not sustainable.

(8) Having regard to the contentions of the appellant/husband and having gone through the record available before us in this appeal as well as record of the trial Court, the points which fall for determination in this appeal are as under :-

- I. Whether a Family Court constituted under the Family Courts Act, 1984, has the jurisdiction to set aside or nullify a decree

of Divorce passed by it under Section 13 (B) of the Act, 1955 ?;

- II. Whether, findings of the trial Court on issues no. 1 and 2 are perverse and unsustainable in law, thereby rendering the impugned judgment erroneous ?;
- III. Whether the judgment and decree dated 08.07.2005 in Suit No. 32 of 2005 was obtained by deceit, misrepresentation and fraud?;
- IV. Whether the judgment and decree dated 08.07.2005 in Suit No. 32 of 2005 is liable to be declared null and void ?

Point No. I

(9) No such objection to jurisdiction of the Family Court to hear the suit in question was raised by the appellant before the trial Court nor any application was filed for framing additional issue on this point. Nevertheless, as a jurisdictional issue has been raised before us, we proceed to consider the same.

(10) Section 7 of the Family Courts Act 1984 (hereinafter referred to as ‘Act, 1984’) deals with the jurisdiction of the Family Court. Section 7 of 1984 reads as follows :-

“7. Jurisdiction.-- (1) Subject to the other provisions of this Act, a Family Court shall--

(a) **have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation**; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.--The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:--

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit of proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit of proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise--

(a) the Jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.”

(emphasis added)

- (11) A bare reading of the aforesaid provision shows that a Family Court subject to the provision of the 1984 Act has and exercises all jurisdiction exercisable by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature that are referred to in the 'Explanation'; besides, it is deemed for the purposes of exercising such jurisdiction under such law, to be a District Court, or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends. Section 10 of the Act 1984 is also relevant in this context.
- (12) From the facts of the present case, it is seen that Original Suit No. 1411 of 2005 (hereinafter referred to as '**second suit**') was filed by the respondent-wife for declaring the judgment and decree dated 08.07.2005 passed by the learned Family Court at Lucknow dissolving the marriage to be a nullity and for cancellation of the same, as allegedly, the same was obtained by misrepresentation and fraud. The outcome of the second suit filed by the respondent-wife thus related to the determination of her matrimonial status, that is to say, as to whether she is or she is not the wife of the appellant.
- (13) The decree of the Family Court dated 08.07.2005 by which the matrimonial relationship between the parties stands severed

declares the legal character of the parties as far as their relationship of husband and wife is concerned. Thus, the subsequent suit that had been filed by the respondent is in essence for determining her matrimonial status as wife of the appellant for which the Family Court would indeed have jurisdiction in terms of Clause (b) of the 'Explanation' to Section 7 (1) of the 1984 Act. The plea of the appellant is, accordingly, rejected. Point No.1 is answered accordingly.

Point Nos. II, III and IV

- (14) Point nos. II, III and IV are being dealt with conjointly. Learned Family Court, while considering issues no. (i) and (ii) framed by it, has recorded a finding that circumstances and evidence of the present case do not support divorce by mutual consent viz. firstly because in para-3 of Original Suit No.32 of 2005 filed under Section 13-B of the Act, 1955, on one hand, it was stated that both of them were living together and on the other, it was also stated that they were living separately since 2002; secondly because there is no explicit mention nor any statement regarding any alimony given by the appellant/husband to the respondent/wife at the time of divorce by mutual consent, whereas generally in such a case the situation regarding alimony would be determined; thirdly if the wife had actually accepted such an important incident of her life willingly, then, she would have told it gladly and immediately to her parents

but not doing so, shows that she was unaware of the proceedings and nature of the documents signed by her and that her signature and photograph were taken by deceit as the wife had stated in her plaint that her husband brought her by telling her about the necessity of affixing her signature and photograph in the formalities related to his service; fourthly P.W.1 (the wife herself) and P.W.2, who is the father of the respondent/wife, had stated that on 26.09.2005, when he along with his daughter (respondent herein) went to in-laws of her daughter, then, they came to know the factum of divorce. The learned Family Court has recorded a finding that P.W.1 herself had stated that on 15.06.2005, her husband/appellant brought her to permanent residence at Pauri Garhwal, from where her husband brought her to her parents' residence at Dehradun on 18.08.2005 by saying that he would take some time for arranging accommodation at Joshimath.

- (15) Besides the aforesaid, the learned Family Court has also opined that on one hand, in the Original Suit no. 32 of 2005 filed under Section 13-B of the Act, 1955, both have accepted to live together and as such, in that situation, as per the provisions of Section 13-B of the Act, 1955, it cannot be said that at the time of filing of the suit, both the parties were living separately for a year or more. In this background, learned Family Court has

decided issues No.1 and 2 in the affirmative in favour of the wife and has decreed the suit of the respondent/plaintiff.

(16) As far as these points are concerned, this Court finds that appellant/husband was serving in Indian Army and was posted at Joshimath (Uttaranchal). He got married with the respondent/wife on 05.05.1995 in accordance with Hindu rites and rituals in Village Gadauli, district Pauri Garhwal (Uttaranchal). After marriage, appellant/husband brought respondent/wife to his residence at village Haluni, district Pauri Garhwal. Out of their wedlock, two male children were born on 21.07.1997 and 05.07.2000, respectively. The appellant/husband was transferred to Lucknow on 25.04.2003. The wife continued to live with the in-laws as stated by P.W.2 with no contrary evidence led by appellant on this issue.

(17) The appellant/husband, as per his own testimony, was allotted official accommodation at Lucknow on 01.11.2004. He brought the respondent/wife and his younger son to Lucknow in November, 2004, though the wife says that she was brought in January, 2005. Be that as it may, as per the wife, she was brought to Lucknow. The husband has brought on record the photographs of the train tickets in support his claim, which we will deal later. The husband brought her to Lucknow as per the wife on the pretext of completion of necessary service related

formalities while leaving both the children in the custody of his parents. In paragraph-6 of her plaint, respondent/wife has stated that on 05.01.2005, her husband/appellant brought her to a place and got her signature on some papers as this was necessary in connection with his service. Her husband/appellant also convinced her not to disclose anything about the photograph and signature to anyone. Thereafter, her husband kept her there till afternoon and then brought her to his temporary residence near his work place, where the appellant intimidated and confused the respondent/wife not to tell anyone about the signatures as well as pasting of the photographs etc. In paragraph-7, she has stated that while going on duty, she was instructed not to meet anyone nor to leave the house. Her husband kept her with him for about 6 months only. During the said period, again her husband brought her to the said designated place by telling her that some interrogation in connection with her signatures and photographs already made on the service related documents were required, wherein her husband, in his presence, again got signed some papers. Thereafter, on 15.08.2005, her husband brought her to his village Halauni, district Pauri Garhwal and told her that he had been transferred from Lucknow to Joshimath and he would require some time for arranging accommodation etc. at Joshimath and till then she should stay with his parents and after arranging accommodation etc. at Joshimath, he would take

her to Joshimath. In paragraph-9, wife/respondent has stated that after staying for two days at her in-laws house, on 18.08.2005, her husband took her to the residence of her father posted at Dehradun and left her there. When her husband did not come to take her to her matrimonial home, then on 26.09.2005, she along with her father went to the house of her in-laws, wherein her in-laws for the first time disclosed to the respondent/wife and her father that the appellant had already taken divorce from Lucknow Court and now she had no relation with her in-laws and her husband and sent her away. In paragraph-10, respondent/wife has stated that on 04.10.2005, she came to Lucknow with her father and sought legal guidance from an Advocate and on 07.10.2005 filed an application for information regarding the case alleged to have been filed in the Family Court and then she came to know that Original Suit No. 32 of 2005 was registered on 06.01.2005.

- (18)** In the plaint, respondent/wife has also asserted that the said suit was not even verified and most significantly there was no mention of giving lump sum amount to her towards permanent alimony. Further, it has been contended that her signature on the said suit were due to misrepresentation and deceit by her husband/appellant. It has been also stated that the respondent/wife was a rural woman, not much educated, who gullibly

signed the papers on the instructions of her husband as any other Indian wife in her position would do.

- (19) The appellant denied the case of the respondent/plaintiff in his written statement but there are certain pleadings therein, which are relevant. In para-4, he has stated as under :-

“4.....वास्तविकता यह है कि प्रतिवादी के मूल निवास के साथ वादिनी समय-समय पर, स्थानान्तरिण होने पर और निवास की सुविधा प्राप्त होने पर, स्थानान्तर स्थान पर निवास करती रही और लखनऊ में नवम्बर 2004 से जनवरी 2005 तक सेना के सरकारी आवास में निवास किया था। वाद-पत्र संख्या-32/2005 अं0 धारा-13 (बी) दाखिला के 12 दिन बाद प्रतिवादी के मूल निवास उत्तरांचल में 22 अप्रैल तक तथा 23 अप्रैल से 10 जुलाई तक फिर लखनऊ में रहने के बाद वादिनी को उसके मायके भेज दिया गया था। वादिनी का यह कहना भी गलत है कि दोनों बच्चे मूल निवास छोड़ दिये गये थे। वास्तविकता यह है कि बड़ा पुत्र स्कूल हेतु मूल निवास पर रह रहा था तथा छोटा पुत्र आकाश सिंह प्रतिवादी व वादिनी के साथ लखनऊ में निवास कर रहा था।”

- (20) In para-5 of written statement, it has been averred as under :-

“5.....वास्तविकता यह है कि प्रतिवादी का लखनऊ स्थानान्तरण होने पर, सरकारी आवास सुविधा प्राप्त होने पर नवम्बर 2004 में ही छोटे पुत्र तथा वादिनी के साथ निवास हेतु आ गया था जिसका रिकार्ड सेना के सरकारी आवास से प्राप्त किया जा सकता है आवास एलाटमेन्ट की प्रति संलग्नक-1 हैं। वादिनी का यह अभिकथन कि जनवरी 2005 में कलुषित उद्देश्यों की पूर्ति हेतु वादिनी को लखनऊ लाया गया असत्य

है। छोटे पुत्र आकाश सिंह का इलाज लखनऊ में चल रहा था, जो संलग्नक-2 है। स्वयं सिद्ध करता है कि वादिनी असत्य अभिभाषण कर रही है। वादिनी को छोटे पुत्र सहित लखनऊ लाया गया था रिजर्वेशन स्लिप को फोटो प्रति संलग्नक-3 है।”

- (21) These averments clearly show that even as per appellant, respondent/wife before coming to Lucknow had been residing at the appellant/husband permanent residence i.e. village Halauni Pauri Garhwal, meaning thereby they had not been living separately for one year preceding the filing of Suit No. 32 of 2005 on 06.01.2005 as was a prerequisite for a suit under Section 13-B of the Act, 1955, and even thereafter they lived together.
- (22) Further, in para-11 of the written statement, while responding to the plea in para-12 of plaint regarding the suit not being maintainable on account of non-existence of jurisdictional prerequisites mentioned in Section 13-B pertaining to one year of separate living, it has been averred by the husband, as under :-

“11. यह कि वाद-पत्र की धारा-12 का कथन असत्य, भ्रमपूर्ण है मनगढन्त है, गुमराह करने का प्रयास है इनकार है सत्यता यह है कि मूल वाद सं0-32/2005 की धारा-3 वादिनी के लिखित साक्ष्य में जनवरी 2002 से पति-पत्नी के शारीरिक सम्बन्ध न रहना कहा गया है जो स्पष्ट करता है कि पक्षकारों के मध्य पति एवं पत्नी के सम्बन्ध समाप्त हो गये थे और पति-पत्नी इस

आशा से एक साथ रह रहे थे कि समय बीतने पर हो सकता है कि पति-पत्नी के सम्बन्ध फिर से मधुर हो जाये जो लखनऊ में आकार एक साथ निवास करने पर भी सम्भव नहीं हो सका और अं० धारा 13 (बी) हि० वि० अधि० की आवश्यकता पक्षकारों के मध्य संस्थित किया गया।”

- (23) These averments again amount to an admission that they were not living separately during the immediately preceding one year from the date of filing of Suit No. 32 of 2005. Language used in Section 13 (B) of the Act, 1955 is “*on the ground they have been living separately for a period of one year or more.*”
- (24) In para-10 of his written statement, appellant has averred that respondent has studied upto Class-10th, a fact which has been denied by her in her plaint, examination-in-chief and cross-examination. Interestingly, no suggestion/question was put to her by the appellant in her cross-examination.
- (25) Before considering the oral testimony and other evidence on record, in continuation of the above, we may refer to the pleadings in the earlier suit to examine as to whether the jurisdictional prerequisites for attracting Section 13 (B) of the Act, 1955 were satisfied or not. In para-3, 10, 11 and 12 of the plaint under Section 13 (B) of the Act, 1955, it was averred as under :-

“3. यह कि उपरोक्त पते पर हम याची गण साथ-साथ रह रहे हैं किन्तु आपस में अत्यधिक मतभेद के कारण जनवरी 2002 से अलग-अलग रह रहे हैं और दोनों के मध्य इस बीच पति-पत्नी के सम्बन्ध नहीं रह गये हैं।

10. यह कि इस समय उभय पक्षकार उपरोक्त पते पर एक साथ निवास कर रह हैं किन्तु आज दिनांक 6-1-2005 से अलग-अलग रहेंगे और उपरोक्त वाद में प्रस्तुत होकर मुकदमे की पैरवी करते रहेंगे।

11. यह कि वाद-का कारण आपस में पति-पत्नी का सम्बन्ध समाप्त हो जाने के बाद जनवरी 2002 को उत्पन्न हुआ जब पति-पत्नी के बीच में उपरोक्त वाद को विवाह विच्छेदन हेतु दाखिल करने का समय लिया गया।

12. यह कि उभय पक्षकार लखनऊ जनपद में उपरोक्त पते पर विवाह के बाद से निवास कर रहे थे और इस समय भी निवास कर रहे हैं जो माननीय न्यायालय के क्षेत्राधिकार में है।”

- (26) Apart from the fact that the written statement of the appellant in Suit No. 1411 of 2005 itself contains averments/admissions that they had not been residing separately for one year or more prior to 06.01.2005, the averments in the plaint of the earlier suit quoted above, apart from being self contradictory and contrary to subsequent pleadings in written statement of subsequent suit, especially para-10 and 12 clearly establish that they had not been living separately and the jurisdictional prerequisite for moving a suit under Section 13 (B) (1) was absent.

- (27) In her examination-in-chief filed on affidavit, respondent/wife (P.W.1) has categorically stated that the alleged decree of divorce was the result of misrepresentation, deceit and fraud practiced by her husband taking advantage of the trust reposed by her on him, she not being much educated, being a trusting Indian wife. She has stated that by keeping her in dark, her husband got her signature on the pretext of some service related formalities of the husband. She has categorically stated that if she had even slightest information that these documents were related to divorce, then, she would never have signed them nor would have gone anywhere.
- (28) In her cross-examination, she (P.W.1) has categorically stated that her husband told her the necessity of her signature and her photograph on the service related documents. P.W.1, in her cross-examination, has also stated that she did not enquire anything from her husband relating to her visit to Court. This statement, in our view, is quite natural because P.W.1 herself has stated in as many words that her husband had asked her to not say anything regarding her signature and photograph to anyone and had also threatened her with dire consequences if she told anyone in this regard. She has clearly stated in her cross-examination that she did not know the subject of the first suit. The subsequent suit has been filed because her husband had cheated her. She has accepted that her husband was

allotted official accommodation in November, 2004 and after a few days, he had taken her and she had stayed with him for 6 or 7 months. She has further stated as under :-

“ यह कहना सही है कि नौकरी सम्बन्धी कागजातों पर वादिनी के हस्ताक्षर व फोटो लगाया जाना आवश्यक है कहकर, निर्धारित स्थान पर ले गये। यह बात दि० 05.01.2005 की है। दि० 05.01.2005 की सुबह 10:00 बजे मुझे ले गये। शाम को 2:00-3:00 बजे वापस लाए। इन्होंने कहा था कि वो मेरा ऑफिस है ऑफिस ले गये। मुझे कोई नौकरी नहीं मिली। इन्होंने मुझसे यह भी कहा था कि किसी से यह बात बताना नहीं कि कागजात पर हस्ताक्षर किया है व फोटो लगाया है। मुझे नहीं मालूम कि मुझे किसी से बताने को मना क्यों किया था। मैंने पूछा था तो इन्होंने कहा था कि अन्दर की बात बाहर नहीं जाना चाहिए। पहले मुझे नहीं मालूम था अब मुझे मालूम है कि वह स्थान कचहरी था, जहाँ मुझे ले गये थे। मुझे दोबारा पुनः उसी स्थान पे ले गये जहाँ पहले ले गये थे। वह स्थान यही कचहरी थी, जहाँ दोबारा मुझे लाए थे। 05-01-05 के बाद दोबारा मुझे 5-6 माह उसी स्थान पर कचहरी लाए थे। मुझे नहीं मालूम कि दोबारा जब लाए थे तो उस समय वहाँ ऐसा ही माहौल था, जैसा आज यहाँ है। दोबारा जब मुझे लाए थे तब वहाँ मेरा हस्ताक्षर व अँगूठा लगवाए थे। दोबारा जब मैं 2005 में आयी थी तब मुझसे कोई पूछताछ नहीं हुई थी। मैं अगस्त 2005 में लखनऊ से वापस गयी। मैं अपने पति के साथ वापस गयी थी। लखनऊ से चलकर मैं कार द्वारा स्टेशन में उतरी थी। वहाँ से हम दोनों गाँव हलोनी गये थे। मुझे 2005 के मुकदमे की जानकारी सबसे पहले मेरी सास

व मुझे दी थी। मुझे सितम्बर 2005 में जानकारी प्राप्त हुई थी। तिथि याद नहीं है। मैं अक्टूबर 2005 में लखनऊ कचहरी में 2005 के मुकदमे की जानकारी करने आयी थी। मैं उसी कचहरी में आई, जहाँ पहले दो बार आ चुकी थी। यहाँ आकर मैं अधिवक्ता श्री आर० के० यादव से सम्पर्क किया। उन्होंने मुझे मुकदमे के बारे में बताया। मैं वकील साहब के तख्त पर बैठी थी। वकील साहब ने जानकारी करके मुझे बताया था। मैं किसी न्यायालय या कार्यालय में नहीं गयी। जानकारी होने पर मेरे साथ जो धोखाधड़ी हो रही थी, उसके खिलाफ मैंने मुकदमा दायर किया। जानकारी होने व मुकदमा दायर करने के मध्य मैंने किसी कागज पर हस्ताक्षर नहीं किया था।

(29) She (P.W.1) has reiterated in her cross-examination that she was not literate. No question or suggestion was made to her in her cross-examination as to whether she had been living separately for one or more year prior to filing of Suit No. 32 of 2005.

(30) This Court cannot be oblivious of the fact that the respondent/wife being a woman of humble and rural background, not much educated, who reposed trust in her 'Patiparmeshwar' and it was quite natural that wife/respondent did not know relevance of those papers upon which her husband got her signature and also pasted her photograph *albeit* with ulterior motive and ultimately used them for the said purpose of divorce.

- (31) P.W.2-Bhagirath Singh, who is father of the respondent/wife, was also examined and he has stated in his cross-examination that his son-in-law (appellant) himself had brought her daughter (respondent) from his permanent matrimonial house (Village Haluni, district Pauri Garhwal) to Lucknow in the first week of January, 2005, though he did not remember the date. He has further stated that her daughter lived along with her husband (appellant) in Lucknow till August, 2005. He met his daughter on 18.08.2005. Prior to it, he had not met her. This was obvious because she was residing at her in-laws and thereafter with her husband. He has further stated that her daughter could neither read Hindi nor understand it nor speak it. His daughter had passed Middle class. He has also stated that his son-in-law brought her daughter to his house in the month of August, 2005 and at that time he had no information regarding divorce, however, on 26.09.2005, when he went along with his daughter to her in-laws house, then, parents of his son-in-law told them about the divorce. He has categorically stated that his daughter did not say anything about divorce between 18.08.2005 (date on which appellant left his wife to her parents at Dehradun) to 26.09.2005 (the date when P.W.2 and her daughter/respondent went to in-laws' house of the respondent).
- (32) The testimony of P.W.2 clearly establishes that the appellant had brought his wife to his house on 18.08.2005 when he met

her and that prior to it, she had been living with the appellant since January, 2005. Most important, he (P.W.2) has stated that she did not tell him about any divorce nor did appellant tell him any such fact which establishes the version of the wife (his daughter) that she was unaware about any such divorce proceedings.

- (33) Now, we examine the testimony of appellant, who was examined as D.W.1. In his cross-examination, he has stated that on 06.01.2005, he along with his wife, for the first time, came to Court and both of them came to Court to seek divorce by mutual consent due to lack of mutual understanding. Thereafter, both of them came to Court second time after six months i.e. on 07.07.2005. The learned Judge inquired from them separately. Their statements were also recorded by the Reader of the Court but he did not know the date of recording of the statement, however, he guessed that these statements were recorded on 7th or 8th July, 2005. He has also stated that both of them had borne the cost of litigation jointly filed under Section 13-B of the Act, 1955. Appellant has further disclosed that the respondent/wife was engaged in the work of tailoring in his quarter out of which his wife met the expenditure of litigation. He has clearly admitted that respondent was living with him at the time of filing of suit under Section 13 (B) of the Act, 1955.

(34) Based on an examination of pleadings and evidence on record what comes out is firstly that the prerequisite for initiating proceedings under Section 13 (B) of the Act, 1955 i.e. separate living for one or more year was admittedly absent, therefore, the Suit No. 32 of 2005 was not maintainable in the first place and any proceedings held *de hors* Section 13-B of the Act, 1955 were clearly without jurisdiction. Secondly, the respondent/wife, who was not much educated nor aware about the ways of the world certainly not about law and legal proceedings, was deceived by misrepresentation to sign blank papers and photographs, which were used to obtain a decree of divorce by the appellant fraudulently, we have no reason to disbelieve the testimony of P.W.1 and P.W.2, whereas the testimony of D.W.1 does not inspire confidence. Whether respondent/wife came to Lucknow in November, 2004 or January, 2005 is not very relevant in view of absence of prerequisite for attracting Section 13 (B) of the Act, 1955. Photocopy of tickets filed by the appellant in this regard are also not of much significance in view of the discussion already made.

(35) So far the statements of the parties recorded in the earlier proceedings of Suit No. 32 of 2005 and the order passed on the said case, firstly the learned Judge, who decided the case, did not even satisfy himself about existence of prerequisites of

Section 13 (B) of the Act, 1955, absence of which was apparent from the pleadings of the plaint, moreover, the order-sheet reveals cryptic observation regarding attempt for mediation and inquiry. Most important, the statement of respondent and appellant are almost verbatim similar which is not natural. The statements were recorded by the Reader. Though they bear the signature of the Presiding Officer and an endorsement that the Reader had recorded it on his dictation the verbatim similarity in the statements does not inspire confidence especially when the Presiding Officer did not even bother to see as to whether the suit was maintainable on the basis of pleadings before him. Proceedings did not appear to have been held in accordance with law. Even the address of the husband and wife in their statements recorded by the Reader and the plaint were same but even this was not noticed nor mentioned by the Presiding Officer. Suit No. 1411 of 2005 was filed within almost three months of the decree dated 08.07.2005 being passed in Suit No. 32 of 2005, as soon as the respondent came to know about the fraud, which was not only on her but also on the Court. P.W.1 and P.W.2 have stood there ground in cross-examination, whereas the defence of the appellant/defendant is shaky and unbelievable/ unacceptable.

(36) Section 13-B of the Act, 1955 reads as under:-

"13-B. Divorce by mutual consent.--(1)

Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they **have been living separately for a period of one year or more**, that they have not been able to live together and that they have **mutually agreed that the marriage should be dissolved**.

(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 subsection (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 averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree."

(37) The requirements of Section 13-B of the Act, 1955 for grant of divorce are that the parties had been living separately for a period of one year or more at the time of filing the petition and that they had not been able to live together, besides, they had mutually agreed that the marriage should be dissolved. As already discussed, both these ingredients were not satisfied.

(38) The appellant/husband took advantage of his dominant position vis-a-vis his wife as also the trust reposed by her on account of her fiduciary relationship and betrayed the same.

(39) The Family Court giving reference to the plaint and the written statement as well as circumstances of the case has rightly come to the conclusion that the appellant by playing fraud upon the Family Court as well as by keeping his wife in the dark, obtained the decree of divorce vide judgment/decreed dated 08.07.2005, which was legally not sustainable. Its finding on issues no. 1 and 2 do not suffer from perversity. They are reinforced by our own reasoning. The decree dated 08.07.2005 was obtained by misrepresentation and deceit. The suit itself was not maintainable. The decree dated 08.07.2005 is null and void. Point nos. II to IV are answered accordingly.

(40) For the reason aforesaid, we do not find any illegality or infirmity in the impugned judgment/order. The Family Court has rightly set-aside the judgment/order dated 08.07.2005.

(41) The First Appeal is hereby **dismissed**. No order as to costs.

(42) Registry shall transmit the trial Court's record to the Court concerned forthwith.

(Om Prakash Shukla, J.) (Rajan Roy, J.)

Order Date : 29th August, 2024
Ajit