

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FAMILY COURT APPEAL NO. 30/2015

(Sau.Pratiksha @ Chanda w/o Hemant Parate vs. Hemant Baburao Parate)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
of directions and Registrar's orders

Court's or Judge's order

Mr.V.B.Gawli, Advocate for appellant

CORAM : SMT. VASANTI A. NAIK &
A.M. BADAR, JJ.

DATED : 28th April, 2015.

Heard.

By this First Appeal, filed under Section 28 of the Hindu Marriage Act, 1955 read with Section 19 of the Family Court's Act, the appellant has questioned the legality, validity and correctness of the judgment, order and decree passed by the Family Court, under Section 13-B of the Hindu Marriage Act.

The Family Court has, by the judgment dated 17th February 2015 passed a decree of divorce by mutual consent, after interviewing both the parties and on a consideration of the consent terms. The appellant has challenged the said judgment on the ground that the decree of divorce is secured by the respondent, by undue influence. According to the appellant, the respondent had accompanied the appellant to one lawyer and had instructed the lawyer to draft the petition for divorce by mutual consent. It is stated that though the appellant was not ready for seeking divorce by mutual consent, the respondent managed to file the petition on

2.8.2014. It is stated in the memorandum, of Appeal that the respondent had falsely mentioned in the divorce petition filed under Section 13-B of the Act that the parties were living separately since 10.7.2014. According to the appellant, when the appellant was not desirous of seeking a decree of divorce by mutual consent, the respondent got annoyed and forced the appellant for giving her consent for divorce. It is stated that in the aforesaid background, the appellant was forced to seek a decree of divorce by mutual consent.

The issues that arise in this case, on the basis of the grounds in the memorandum of Appeal cannot be decided by this Court without granting an opportunity to the parties to tender evidence. The appellant has not challenged the decree granting divorce by mutual consent on any other ground, except the ground that the decree of divorce by mutual consent was sought by the respondent by playing fraud and by exerting force on the appellant. If according to the appellant, the decree of divorce by mutual consent was sought fraudulently and by exerting force or undue influence, it would be necessary for the appellant to file appropriate proceedings before the Civil Court. In the First Appeal, this Court would not be in a position to permit the parties to tender evidence - both oral and documentary. The appellant has another remedy for challenging the judgment and decree on the ground of fraud, force and undue influence. The appellant has not raised any challenge to the manner in which the judgment and decree is rendered by the Family Court and/or in regard to any flaw in the same.

In the circumstances mentioned herein-above, we decline to entertain the First Appeal. The First Appeal is dismissed, with no order as to costs. The points raised in the First Appeal are, however, kept open.

JUDGE

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