

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-M-281-2008

Decided on : 09.02.2016

Kiran

.... Appellant

VERSUS

Surinder Kumar Bhardwaj

..... Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: **Mr.Parveen Kataria, Advocate, for the appellant.**

Mr.Rajinder Goyal, Advocate, for the respondent.

RAJIVE BHALLA, J. (ORAL)

The parties approached the Additional District Judge, Chandigarh, for grant of a decree of divorce by mutual consent. The marriage was dissolved by judgment and decree dated 31.05.2003, passed by the Additional District Judge, Chandigarh. The appellant thereafter filed an application, for recalling of the aforesaid judgment and decree, which was dismissed on 22.01.2007.

Counsel for the appellant submits that the judgment and decree, passed under Section 13B of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') was obtained by fraud. The appellant-wife was suffering from manic depressive psychosis and, therefore, was not in a fit state of mind. The respondent-husband obtained her signatures by fraud on the petition for divorce by

mutual consent during proceedings before the Lok Adalat. The appellant filed an application for recalling of judgment and decree dated 31.05.2003 on the grounds of misrepresentation and fraud including violation of mandatory provisions of law but the application was dismissed without considering the facts and the evidence produced by the appellant in support of her plea that the decree of divorce was obtained by fraud.

Counsel for the respondent submits that there is no error in the impugned judgment and decree much less has any fraud or misrepresentation been perpetuated in obtaining the decree. The appellant signed the petition for divorce, appeared before the Additional District Judge, Chandigarh, received a sum of Rs.40,000/- as permanent alimony and made statements that she has no objection to the dissolution of the marriage. The Additional District Judge, Chandigarh, then examined the pleadings, statements made by both parties and dissolved the marriage by grant of a decree of divorce by mutual consent. The application for setting aside this judgment and decree is an afterthought and neither the evidence adduced nor the pleadings prove any fraud or misrepresentation.

We have heard counsel for the parties, perused the impugned judgment and decree dated 31.05.2003 and order dated 12.03.2008 but are not inclined to accept the appeal or to hold that the judgment and decree dated 31.05.2003 was obtained by fraud or by misrepresentation.

The respondent filed a petition under Section 13 which was converted into a petition under Section 13B of the Act. A perusal of the judgment recorded by the Additional District Judge, Chandigarh, while accepting the prayer for dissolving the marriage by mutual consent, reveals that a petition was filed and duly signed by parties, separate statements of parties were recorded, a receipt of Rs.40,000/- by way of a demand draft was noticed and reasons for parties agreeing to dissolve the marriage by mutual consent recorded. This apart, the attendance of the appellant and the respondent are recorded with their respective counsel. A relevant extract from judgment and decree dated 31.05.2003, reads as follows:-

“6. Statements of the parties have been recorded separately. Sh. Surinder Kumar, petitioner no.1 stated that the compromise, they have arrived at, is in their benefit and for their betterment and a decree of divorce be passed. He further stated that he had paid Rs.40,000/- through draft on account of permanent alimony and maintenance to petitioner no.2 and that the child will remain in his custody and the petitioner no.2 can meet the child.

7. Smt. Kiran, petitioner no.2 in her statement admitted and accepted the statement of Surinder Kumar, petitioner no.1 and prayed that their marriage be dissolved by way of mutual consent. She stated that she has received a sum of Rs.40,000/- vide draft no.92375744 dt. 30.5.2003, drawn at Oriental Bank of Commerce, from the petitioner no.1, on account of permanent alimony and maintenance. She further stated that she will meet the child as and when she wish.

8. From the statement of the parties it is made out that they are residing separately since 24.4.2001. Their relations have reached a deadlock from where there is no return. There appears to be absolutely no chance of their rejoining the company of each other. The marriage between the parties has irretrievably broken. By way of the compromise, they have settled all disputes between them and want to end the litigation.

9. Accordingly, the instant petition filed by the petitioners for a decree of divorce by mutual consent allowed. Since, the parties are residing separately since 24.4.2001, the period of six months for reconsideration is waived.

10. Consequently, a decree of divorce dissolving the marriage between the parties is passed, leaving them to bear their own costs. Decree-sheet be prepared. File be consigned to record room.”

The application filed for recalling of this judgment and

decree was decided after framing issues and affording an opportunity to parties to adduce evidence. The Additional District Judge has after examining the evidence held that it is not a case where the decree was drawn up by the Lok Adalat but a case where the decree was drawn up by the Additional District Judge, Chandigarh, after passing a detailed judgment and after recording statements of the parties etc. The contention that the period of six months required after recording statements in first motion was ignored, may be prima-facie correct but has been discarded by rightly holding that on the relevant date as per judgments of the Punjab & Haryana High Court, courts were normally waiving the period of six months. The Additional District Judge, Chandigarh, has dealt with the plea of fraud, undue influence and coercion as follows: -

“17. Now petitioner No.2 has come to this court alleging that her consent for mutual divorce was obtained by practicing fraud, misrepresentation, coercion and undue influence petitioner No.1 misrepresented her by saying that if she signs the papers in the court, he could give a sum of Rs.40,000/- for the marriage of their daughter. As PW1 she also supported her version. But the above statement of petitioner No.2 is not sustainable. From the record, it is evident that the amount of Rs.40,000/- was given to petitioner No.1 on account of permanent alimony and maintenance. Above all, the custody of the daughter was kept with petitioner No.1. In that eventually payment of Rs.40,000/- to the wife in the marriage of their daughter does not arise. Thus, this plea of petitioner No.2 is not sustainable on the face of it.

18. Petitioner No.1 has failed to furnish any particular of fraud, coercion or undue influence. In the absence of the same, it cannot be said that the consent of petitioner No.2 for divorce by mutual consent was obtained by petitioner No.1 by fraud, undue influence or coercion in any manner. It is a case, where the statement of petitioner No.2 was recorded in the court. Not only once even twice her statement was recorded. The Court must have also satisfied herself that the consent of petitioner No.2 was voluntarily and further that she infact wanted to get the decree of divorce by mutual consent. The contention of learned counsel for petitioner No.2 that her consent for decree of divorce by mutual consent was obtained by misrepresentation, does not appeal to reason and is not sustainable. On the ground of fraud, counsel for petitioner No.2 cited Smt. Pusplata Rout Vs. Damodar Rout A.I.R. 1987 Orissa 1; S.P.Chengalvaraya Naidu Vs. Jagannath 1994 (2) CIVIL COURT CASES 131 (S.C.) and Hamza Haji Vs. State of Kerala 2006 (4) CIVIL COURT CASES 407 (S.C.).”

A perusal of the judgment and decree passed by the Additional District Judge, Chandigarh, dissolving the marriage of the parties and the order dismissing the petition for recalling of the said judgment and decree reveals the absence of any cogent pleadings or evidence to prove fraud, coercion or misrepresentation. A plea of fraud has to be proved like any ordinary fact. The allegation that decree was passed by a Lok Adalat, is factually correct. The judgment and decree dated 31.05.2003 records the presence of both parties, records that their separate statements were recorded and that the appellant has received Rs.40,000/- by way of demand draft. Thus, as both parties were present, statements were recorded and it is not alleged that the appellant was not present or that her statement was not recorded or that she did not receive money, we cannot grant any relief to the appellant. It would also be appropriate to point out that despite our best efforts to trace the appellant, as recorded in interim orders, she is not traceable, as also stated by her counsel.

Consequently, finding no merit, the appeal is dismissed.

[RAJIVE BHALLA]
JUDGE

09.02.2016
shamsher

[HARI PAL VERMA]
JUDGE