

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No.1812 of 2015 (O&M)
Date of Decision: 17.05.2016

Padam Singh

.....Appellant

Vs

Reema @ Virender Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashwani Talwar, Advocate
for the appellant.

Mr. Surya Parkash, Advocate
for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Appellant has assailed the order dated 26.2.2015 passed by District Judge (Family Court), Sonapat whereby application of the respondent for setting aside the judgment and decree dated 27.11.2009 was accepted.

[2]. Brief facts as gathered from the records of the case are that marriage of the appellant was solemnized with the respondent on 03.02.2005 and a daughter took birth out of their wedlock on 25.03.2007. The petition under Section 13-B of the

Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was allegedly filed for mutual divorce between the parties in the Court at Sonapat. It was alleged that due to the temperamental differences and compatibility, the couple started living separately since 20.04.2008. It was further alleged that as per agreement between the parties the minor daughter would live in care and custody of her father and the said petition was presented before the Court on 22.05.2009. Statement of the parties in first motion was recorded and the case was adjourned to 27.11.2009 for statutory compliance. Thereafter both the parties appeared on 27.11.2009 and made their statements. Judgment and decree under Section 13-B of the Act was passed on 27.11.2009 itself, dissolving the marriage by mutual consent.

[3]. Thereafter respondent-wife filed an application on 01.05.2012 for setting aside the judgment and decree dated 27.11.2009 passed under Section 13-B of the Act on number of grounds. Trial Court took cognizance of the matter and ultimately set aside the impugned judgment and decree passed in HMA Petition No.34 of 2009 titled as Smt. Reema @ Virender Kaur vs. Padam Singh being obtained by playing fraud on the Court as well as on the respondent. Trial Court declared the same to be nullity and *non-est* in the eyes of law.

[4]. Learned counsel for the appellant has assailed the order dated 26.02.2015 passed by the trial Court on the following facts:-

- (i) After dissolution of marriage on 27.11.2009, the appellant solemnized second marriage with one Smt. Sunayana Singh on 26.09.2014. Minor daughter Rashmit Kaur born out of the previous wedlock between the parties is in the custody of appellant since the year 2008 when she was one year of age. The daughter is being given proper attention by the new mother.
- (ii) The respondent herself has set up a case that appellant started making false bills of the respondent in order to to get himself transferred near to his village and she was administered intoxicated drugs by the appellant so that she became senseless and he could obtain decree of divorce by mutual consent. The petition under Section 13-B of the Act was filed on 15.05.2009 which was withdrawn on the same day. Another petition under the said Act was filed on 21.05.2009 in which statement of the respondent was recorded by the Family Court when she was in senseless condition and thereafter on 27.11.2009, she was also not in a fit condition to make statement. The fraud was alleged that ever after taking divorce, she continued to live with the respondent and it is

only in the month of June 2010, she came to know about the decree of divorce dated 27.11.2009. According to learned counsel the said fact was belied by the documentary evidence as adduced by the respondent herself in the proceedings before the Family Court. The entire treatment chart from 2003 till 10.10.2009 was produced in **CRM-M No.25790 of 2011** titled as **Padam Singh vs. State of Haryana and another**. In the evidence, Dr. Manish Jain, Senior Resident of Ram Manohar Lohia Hospital, Delhi was examined by respondent as AW-4. Statement of the Doctor was relied to rebut the contention of the respondent.

- (iii) The plea of fraud was required to be proved like a criminal case. The preponderance of probability has no place, if the case is based on the plea of fraud, that has to be proved beyond reasonable doubt.
- (iv) Respondent-wife is a well educated lady having degree of B.Com. She also joined post-graduation in English and qualified the first year in the year 2003 and thereafter she was granted roll number-cum-admit card for appearing in the examination to be held in April/May 2004. She also appeared in entrance test of B.Ed. for the year 2008-09 and, therefore, plea of the respondent was refuted.

- (v) Family Court has not appreciated that the statement of Dr. Manish Jain, Senior Resident of Ram Manohar Lohia Hospital, Delhi in its correct perspective. Reference was made to the cases filed by the respondent to allege that she was fully cured in the year 2010.
- (vi) It was claimed that the above said cases filed by the respondent was intended to wreck vengeance and no headway was made. The guardianship case filed at Dwarka, New Delhi was dismissed in default on 12.12.2011. The subsequent petition filed before the Guardian Court, Gurgaon was dismissed under Order 9 Rule 9 CPC.
- (vii) FIR No.248 dated 03.08.2010 was quashed by this Court against the family members of the appellant, however *qua* the appellant FIR was not quashed, but in SLP preferred by him the same was quashed.
- (viii) Similarly in criminal complaint dated 30.07.2013 filed at the behest of Smt. Kamla Devi, the Court at Dwarka, New Delhi vide order dated 03.09.2013 held that registration of FIR is not required and case be proceeded as a criminal complaint. Order of summoning under Sections 323/341/354/506/34 IPC was passed on 31.01.2014. The said order was challenged by the appellant and his brother before the Appellate Court at Dwarka, New

Delhi where proceedings were stayed.

[5]. Besides alleging the aforesaid facts, number of grounds were also taken by the appellant to assail the impugned order.

[6]. On the other hand, the respondent-wife took the following grounds before the trial Court for setting aside the judgment and decree dated 27.11.2009:-

- “a). that marriage between the parties was solemnized on 3.2.2005 and out of the said wedlock, a daughter-Rashmit Kaur was born;*
- b). that non-applicant-respondent-Padam Singh started making false medical bills of applicant-Smt. Reema @ Virender Kaur in order to get himself transferred near to his house in village Saboli, District Sonipat, so that, he could get divorce from her;*
- c). that applicant-Smt. Reema @ Virender Kaur was administered intoxicating drugs by her husband-Padam Singh, so that, she becomes senseless and he could obtain a decree of mutual divorce;*
- d). that earlier also, Padam Singh had managed to file a divorce petition under Section 13-B of the Hindu Marriage Act, 1955 which was assigned to the Court of Sh. K.C. Sharma, the then learned Additional District Judge, Sonipat, and the same was registered as HMA*

Case No.42 of 2009. The same was instituted on 15.5.2009 but withdrawn on the same day after the Presiding Officer asked Padam Singh to call respective parents of the parties. According to applicant-Smt. Reema @ Virender Kaur, after the said direction of the Court, Padam Singh became perplexed and his plan to obtain fraudulent decree under Section 13-B of the Hindu Marriage Act, 1955 stood frustrated. According to applicant-Smt. Reema @ Virender Kaur, she had never engaged any counsel nor did she know him and it was a calculated move of Padam Singh, which failed;

- e). *that just after seven days of withdrawing the said petition, Padam Singh again filed a mutual divorce petition under Section 13-B of the Hindu Marriage Act, 1955, on 22.5.2009, which was assigned to the Court of Shri Subhas Mehla, the then learned Additional District Judge, Sonipat. At that time, applicant-Smt. Reema @ Virender Kaur was in senseless condition. According to applicant-Smt. Reema @ Virender Kaur, the said Court of Shri Subhas Mehla, the then learned Additional District Judge, Sonipat, did not call the respective parents of the parties and Padam Singh succeeded in his game-plan and got passed the judgment and decree dated 27.11.2009;*

- f). *that signatures of applicant-Smt. Reema @ Virender Kaur on the petition under Section 13-B of the Hindu Marriage Act, 1955, as well as on her statements on first and second motion were obtained when she had been intoxicated by drugs. The said Court also did not follow the prescribed procedure of reconciliation between the parties, as was mandatory under the provision of the Hindu Marriage Act, 1955;*
- g). *that in order to seek dissolution of marriage under Section 13-B of the Hindu Marriage Act, 1955, it is mandatory that the spouses should live separately at least for one year but in the present case, as per the record, applicant – Smt. Reema @ Virender Kaur remained/lived with Padam Singh as his wife at his Quarter No.3, Type-4, ITBP Campus, Saboli, District Sonipat, up to 5.6.2010 and she also received treatment from different hospitals beginning from 1.5.2008 to 8.3.2010. The reimbursement of the medical bills was also obtained by Padam Singh from his department by admitting her as his wife. The applicant-Smt. Reema @ Virender Kaur also received treatment from Ram Manohar Lohia Hospital, Delhi, on 3.9.2009 and throughout the year 2009 and reimbursement of her medical bills was taken by Padam Singh from his department showing her as his wife. Even*

Padam Singh had taken the applicant-Smt. Reema @ Virender Kaur to Bhuvneshwar from 26.12.2009 to 7.1.2010 and she had travelled with him as his wife. The TA/DA of applicant Smt. Reema @ Virender Kaur was claimed by Padam Singh, her husband, by treating her as his wife. Thus, Padam Singh obtained the judgment and decree dated 27.11.2009 by playing fraud;

- h). that applicant-Smt. Reema @ Virender Kaur resided with Padam Singh, her husband, up to 5.6.2010 when she was thrown out of her matrimonial home by him from the campus by stating that he had got a decree of divorce from the Court. As per the service rules, Padam Singh did not intimate the factum of decree of divorce dated 27.11.2009 to his department up to 7.6.2010. During the said period, there was telephonic calls from the parents of the applicant-Smt. Reema @ Virender Kaur beginning from 20.04.2008 to 5.6.2010 and the call details would go to show that there was telephonic communication between the parties and their respective families;*
- i). that wrong facts pleaded by Padam Singh regarding separate residence of the parties, was a calculated move on his part, which is based on mis-representation and applicant-*

Smt. Reema @ Virender Kaur was intoxicated and she was kept in dark about all the proceedings and she did not know and understand as to what was happening and that she had also never engaged any counsel and she was never explained about the facts pleaded in the mutual divorce petition. According to applicant-Smt. Reema @ Virender Kaur, her Advocate was also engaged by Padam Singh with a sole motive to get decree of mutual divorce;

- j). that after being thrown out of her matrimonial home by Padam Singh, applicant-Smt. Reema @ Virender Kaur visited the judicial complex, Sonipat, and came to know about the fraudulent divorce proceedings and then, she filed different applications as well as application under the provisions of Right to Information Act, 2005, for obtaining the copies, and then, she came to know about the judgment and decree dated 27.11.2009;*
- k). that on the complaint of applicant-Smt. Reema @ Virender Kaur, FIR No.248/2010 under Sections 498-A, 420, 376, 328 and 506 of the IPC was registered against Padam Singh and his family members;*
- l). that after obtaining certified copies of the judgment and decree dated 27.11.2009, applicant-Smt. Reema @ Virender Kaur filed*

FAO-M-324 of 2010 before the Hon'ble High Court of Punjab & Haryana but the same was dismissed as withdrawn with liberty to her to move necessary application before the concerned court, which had passed the said judgment and decree dated 27.11.2009;

m). that the provisions of the Code of Civil Procedure are applicable to the proceedings under the Hindu Marriage Act, 1955. The petition under Section 13-B of the Hindu Marriage Act, 1955, is in the nature of compromise decree and, hence, the same Court which passed the decree, had the jurisdiction to pass the order regarding setting aside of the same on the basis of fraud.”

[7]. We have heard learned counsel for both the parties and have perused the record as well.

[8]. Learned counsel for the appellant has submitted that the respondent-wife appeared during first and second motion and made the statement before the trial Court. Thereafter, she cannot be permitted to deny the factum of her making statement before the trial Court resulting in passing of decree under Section 13-B of the Act. Learned counsel further submitted that the parties were living separately since 20.04.2008. The first petition filed under Section 13-B of the Act was dismissed as withdrawn on 06.03.2009 at the instance of the respondent.

Again second petition under Section 13-B of the Act was filed in which a wrong date was typed in respect of the year 2007 instead 20.04.2008. On 21.05.2009, correct petition was filed in which first motion was recorded on 22.05.2009 and second motion was recorded on 27.11.2009 and judgment and decree was passed on 27.11.2009 itself.

[9]. The order dated 15.05.2009, was a simpliciter order of withdrawal of the petition under Section 13-B of the Act on the joint statement of the parties. There was no reference of the ground that wrong date was typed of the year as 2007 instead of 20.04.2008.

[10]. Against the judgment and decree dated 27.11.2009, passed by the trial Court, FAO-M No.324 of 2010 was filed by the respondent before this Court. Vide order dated 27.03.2012, the Division Bench of this Court allowed the present respondent to withdraw the above said appeal with liberty to move necessary application before the concerned Court, who passed the impugned judgment and decree. Learned counsel appearing on behalf of the present appellant had no objection to such a course. With the said liberty, appeal was ordered to be dismissed as withdrawn. In the petition under Section 13-B of the Act, we found from para No.9, that no permanent alimony was recorded, rather it was recorded that daughter was living

with husband so the wife will not claim maintenance.

[11]. Learned counsel for the appellant referred to the statement of AW-4 Dr. Manish Jain, Psychiatrist to state that sedatives were prescribed by the Doctor on bed time and their effect would last for the night only. Learned counsel further referred to the Hospital record dated 26.02.2009 that the patient i.e. respondent when treated in Ram Manohar Lohia Hospital, Delhi had poor compliance. Perusal of this document Ex.P-44 would show the treatment given to the respondent by Doctor, which was prescribed for the morning as well. As per list of bill vouchers (Ex.P-46), appellant claimed payment of bills on 31.07.2009, though the bills were relating to the dates of 02.03.2009, 17.03.2009, 02.04.2009, 18.04.2009 and 12.05.2009. Statement of respondent was recorded on 03.01.2014 as AW-1 wherein she admitted her signatures on both the statements given by her. Learned counsel by referring to the said statements contended that once the factum of her deposition on both the occasions was admitted by her, no incident of fraud can be alleged.

[12]. Learned counsel for the appellant relied upon **Smt. Surestha Devi vs. Om Parkash, 1991(2) SCC 25** to contend that parties may live under the same roof as per circumstances and yet they may not be living as husband and wife. The parties

may be living in different houses and yet they could live as husband and wife. What seems to be necessary is that they have no desire to perform marital obligations.

[13]. Learned counsel cited **Union of India vs. M/s Chaturbhai M. Patel and Co., 1976 AIR (SC) 712** to contend that the fraud has to be established like any other charge of a criminal case, whether made in civil or criminal proceedings and has to be established beyond reasonable doubt. However suspicious may be the circumstances and however grave the doubts, suspicion alone cannot take the place of proof.

[14]. Learned counsel further cited **Raj Kumari vs. The Presiding Judge, Lok Adalat, Samjhauta Sadan, Panchkula and another, 2014(2) Law Herald 1504, Lali Devi and others vs. Jai Singh and others, 2012(2) PLR 627, Kashmiri Lal and another vs. Mahender and others, 2013(5) RCR (Civil) 82, Zailo vs. Ram Saran and another, 1996(3) PLR 747 and Ramesh Verma vs. Madan Gopal Verma, 2010(2) PLR 455** to strengthen his arguments on the ground that statement recorded during course of proceedings before the Court passing decree under Section 13-B of the Act has necessary sanctity and the statement so made carries authenticity and cannot be discarded merely *ipso dixit* that the parties claiming that she or

he had not made such statement and also in the context that such a statement cannot be ignored lightly even on the plea of fraud unless and until fraud is established by way of unimpeachable evidence on record.

[15]. On the other hand learned counsel for the respondent submitted that the alleged date of separation as projected by the appellant is 20.04.2008. The respondent was intoxicated with sedatives such as sizodon and norpose tablets which are apparent as per Ex.A-44 dated 26.02.2009. First petition under Section 13-B of the Act was filed in the Court of Sh. Virender Singh, District Judge, Sonapat on 06.03.2009 (Ex.A-16). The said petition was got dismissed as withdrawn on the statement of Mr. Y.K. Verma, Advocate on 06.03.2009 (Ex.A-17). Second petition under Section 13-B of the Act was filed in the Court of Sh. K.C. Sharma, Additional District Judge, Sonapat on 15.05.2009 (Ex.A-12). The said petition was got dismissed as withdrawn on 15.05.2009 itself (Ex.A-15). Thereafter on 22.05.2009, third petition under Section 13-B of the Act was filed in the Court of Sh. Subhas Mehla, Additional District Judge, Sonapat (Ex.A-1) in which recital was made as per para 9 that regarding maintenance and permanent alimony, the present respondent agreed not to claim any money on account of the fact that daughter namely Rashmit Kaur, born to the parties on

25.03.2007 shall be kept by the husband (present appellant) with an undertaking of the respondent-wife that she shall have no visitation rights for the child in future. First motion was held on 22.05.2009 itself when the statements of the parties were allegedly recorded. The case was adjourned for statutory period of six months for 27.11.2009. When statements of both the parties were recorded on the second motion a decree by way of mutual consent was passed on 27.11.2009 itself.

[16]. Learned counsel for the respondent contended that the aforesaid decree was passed without complying with the requirement of Section 23(2) of the Act. On 05.06.2010, respondent was thrown out of the matrimonial house. The appellant sent intimation of divorce to his Department on 07.06.2010 only. The FAO-M No.324 of 2010 was decided by this Court thereby giving liberty to the respondent-wife to file appropriate application before the Court concerned by which decree was granted. Learned counsel further contended that respondent made a criminal complaint to SSP, Sonapat against the appellant regarding fraud and her stay with him till 05.06.2010 and even she visited Bhuvneshwar with the appellant from 26.12.2009 to 07.01.2010 (Ex.A-19).

[17]. Learned counsel for the respondent also pointed out that after withdrawal of FAO-M No.324 of 2010 from this Court

on 27.03.2012, respondent ventured to file the application for setting aside the judgment and decree dated 27.11.2009 before the trial Court on 01.05.2012, where the appellant appeared on 19.05.2012 through his Advocate. He filed reply to the application for setting aside the said judgment and decree on 30.01.2013. Issue of maintainability of the application was framed and that was decided in favour of the respondent by the trial Court on 03.04.2013. Respondent led evidence and her evidence was closed on 01.07.2014. Thereafter from 16.07.2014 to 09.02.2015, as many as eleven opportunities were given to the appellant for leading evidence, but he only examined RW Jatinder Kumar on 11.12.2014. On 26.09.2014, appellant contracted second marriage with Sunayana Singh despite having knowledge of filing of application for setting aside the judgment and decree dated 27.11.2009. The evidence of the appellant was closed by the statement of his counsel on 21.01.2015. Thereafter the case was adjourned for arguments.

[18]. Learned counsel for the respondent further contended that the present appeal was filed along with affidavit of the second wife, who stated that she was having knowledge of the factum of institution of proceedings for setting aside the judgment and decree dated 27.11.2009. According to learned counsel the quashing of FIR in SLP (Civil) No.10245 of 2014 on

24.07.2015 was only by relying upon the letter (Ex.P-20) written by the Commandant holding that the parties lived together even after divorce. Learned counsel stated that divorce petition dated 15.05.2009 was withdrawn as the Presiding Officer was insisting for presence of the parents. According to the appellant the said petition was withdrawn as respondent did not turn up in time. According to learned counsel signatures of the respondent during first and second motion were taken under the state of intoxication as she was administered drugs by the husband. To this pleading there was no specific denial by the appellant-husband.

[19]. The respondent lived with the husband till 05.06.2010 as his wife in ITBP Campus, Saboli and also took treatment from ITBP Hospital during this period and she was also treated at Ram Manohar Lohia Hospital, Delhi. The factum of divorce on 27.11.2009 allegedly obtained by the husband and thereafter living together with the respondent and getting her treated in different hospitals are suggestive of the fact that a calculated move was adopted by the appellant to debar the respondent from challenging the alleged consent decree at a subsequent stage. As against this, the stand taken by the husband was that she was occasionally called at the house to give some solace and comfort to the daughter and to help her arranging medical

treatment. The husband also denied that wife ever stayed and consummated the marriage even a single day prior to the date of divorce for at least 3-6 days.

[20]. Learned counsel for the respondent submitted that respondent was taken by the appellant on a tour to Bhuvneshwar from 26.12.2009 to 07.01.2010 and he also claimed travelling allowance for the said visit and that fact was not denied by the husband in categorical terms. The appellant only intimated his Department regarding his divorce on 07.06.2010 itself, whereas the telephonic record would depict the stay of the respondent with the appellant at Saboli. These pleadings were not denied by the husband specifically. Appellant alleged that rather the respondent was interested to marry some other person.

[21]. The perpetrator of the fraud can be thrown out of the litigation, at any stage as fraud vitiates all solemn acts. Learned counsel contended that the decision obtained on the basis of fraud is a nullity and can be ignored by the Court at feeder level, even if, the main proceedings culminated at a higher level.

[22]. The repeated filing of petitions under Section 13-B of the Act also alleged to be an instance of *mala fide* as according to learned counsel the Court of Sh. K.C. Sharma, Additional

District Judge, Sonapat insisted for the presence of the parents, however the appellant succeeded in getting the petition withdrawn and thereafter instituted the petition in different Court. Appellant kept on changing the stand viz-a-viz. withdrawal of second petition under Section 13-B of the Act on 15.05.2009 from the Court of Sh. K.C. Sharma, Additional District Judge, Sonapat. Para (e) of his reply depicted that the respondent did not turn up in time, therefore, the petition was withdrawn. Whereas, in the suggestion given to the respondent, it was contended that there was successful re-conciliation by the Court on 15.05.2009. Before this Court, at the time of arguments, it was contended that withdrawal was on account of clerical mistake in the year of separation. Learned counsel for the respondent emphasized that the appellant kept on changing his stand which was nothing, but an act of fraud and bench hunting. In the proceedings of withdrawal of the petitions under Section 13-B of the Act, which took place on earlier occasions, there was no liberty sought and granted by the trial Court for filing petition under Section 13-B of the Act and therefore, no fresh cause of action could have been projected by the appellant before the Court concerned.

[23]. While continuing his arguments, learned counsel for the respondent further emphasized that there was no separation as

the appellant and the respondent did not live separately during the period from 20.04.2008 to 05.06.2010 which was mandatory requirement in terms of Section 13-B of the Act. Respondent has taken a specific stand that she lived with the appellant till 05.06.2010 at his official quarter in Saboli and also took treatment from ITBP Hospital and Ram Manohar Lohia Hospital, Delhi. There averments were not specifically denied by the appellant, rather he denied of having stayed and consummated the marriage prior to date of divorce at least for 3-6 days. Appellant admitted the medical treatment etc. Even telephonic record are also corroborative of the facts which have not been denied by the appellant.

[24]. The Commandant of ITBP, Saboli wrote letter to SSP, Sonapat informing that appellant and respondent resided in Quarter No.3, type IV at Saboli from 20.04.2008 to 05.06.2010. The ITBP Hospital record also showed that the respondent was regularly provided on day-to-day basis treatment of routine ailments during 09.02.2008 to 13.05.2010. Even urine pregnancy test of the respondent was conducted on 14.05.2009 and 04.06.2010. If, the plea of the appellant is appreciated, then there was no occasion for conducting the pregnancy test on 14.05.2009, 07.07.2009 and 04.06.2010, if the respondent was living separately from the appellant since 20.04.2008. During

stay of the respondent in Saboli with the appellant, she received number of invitations of the meeting dated 11.05.2008, 08.08.2008, 13.10.2009 and 07.12.2009 at ITBP Campus, Saboli which also establishes her stay with the appellant during the said period.

[25]. Learned counsel further submitted that the respondent was intoxicated. Medical record of Ram Manohar Lohia Hospital, Delhi would show that respondent was suffering from Schizophrenia from February 2009 onwards and she administered sedatives such as sizodon and norpose tablets during day and night. Sizodon causes dizziness, sedation, tremors and pain and Norpose causes drowsiness, hallucination, amnesia and dependence. Learned counsel for the respondent further contended that respondent's signatures were obtained during the first and second motion after administering her intoxicating drugs and making her virtually senseless. These averments have not been denied specifically by the appellant.

[26]. Learned counsel further emphasized that a patient with the ailment like Schizophrenia cannot be considered to be in full consciousness and cannot make statement with free will. Learned counsel by referring to the Section 11 of the Indian Contract Act, 1872 (for short 'the Contract Act') stated that such

a person is not competent to make contract. By referring to Section 12, Illustration (b), of the said Act, learned counsel supplemented the above said arguments. Even as per Order 32 Rule 15 CPC, a person of unsound mind and suffering from mental infirmity cannot enter into the contract and decree against such a person without appointment of guardian is a nullity. The pleadings as mentioned in para 9 of the petition under Section 13-B of the Act itself would show that the respondent did not claim anything for herself towards permanent alimony.

[27]. During course of arguments at one stage, learned counsel for the appellant on instructions from the appellant himself stated at the bar that appellant had paid an amount of Rs.10 lacs to the respondent. The assertion so made by the counsel did not find mention in any of the documents on record, rather the plea was found to be not in consonance with the para 9 of the petition under Section 13-B of the Act. When no visitation rights were to be given as per para 9 of the said petition, then how the respondent was called to pay visit for looking after the daughter. All these factors, according to learned counsel for the respondent go in a long way to show that *mala fide* events were undertaken by the appellant which ultimately entailed in victimization of the respondent.

[28]. Learned counsel for the respondent also emphasized that the petition under Section 13-B of the Act was filed within one year of the alleged separation and on that score alone, decree passed under Section 13-B of the Act is required to be annulled. As per Section 13-B(2) of the Act, the Court should be satisfied regarding truthfulness of the averments made in the petition and for reaching such satisfaction, the Court was required to hear the parties and make inquiries as it thinks fit. No such inquiries were made by the trial Court prior to the grant of decree of divorce and trial Court should have undertaken such exercise particularly in view of the fact that on two previous occasions, the petition under the same Act, was withdrawn without seeking liberty to file fresh on same cause of action. Learned counsel also referred to the provisions in terms of Section 23(2) of the Act for avoidance of fraud, with this background.

[29]. Learned counsel also emphasized that even in the appeal, the appellant has committed fraud by changing the contents of the document Ex.P-20 and has misled the Court by adding extra paragraph in the alleged true translation, though the same did not find mention in the vernacular. The appellant was in the knowledge of the pendency of proceedings since 19.05.2012, but still he contracted second marriage on

26.09.2014 despite the fact that the case was adjourned from 06.07.2014 to 09.02.2015 for his evidence before the trial Court.

[30]. At last learned counsel for the respondent contended that second wife Sunayana Singh has admitted the factum of pendency of proceedings and, therefore, the second marriage was hit by Section 15 of the Act. The effort made by the appellant to adduce additional evidence cannot be accepted as he availed eleven effective opportunities for leading evidence and his evidence was closed on the statement of his Advocate. Learned counsel relied upon **S.P. Changalvaraya Naidu (dead) by LRs. vs. Jagannath (dead) by LRs., 1994 AIR (SC) 853; Hamza Haji vs. State of Kerala and another, 2006(7) SCC 416; A.V. Papayya Sastry and ors. vs. Government of A.P. and ors, 2007(2) RCR (Civil) 431; Balwant Rai Tayal vs. M/s Subhash Oil Company, Hisar through Sh. Raghunath Sahi, 2003(2) RCR (Rent) 148; Badami (deceased) by her LR vs. Bhali, (2012) 11 SCC 574; and Ramesh Kumar and another vs. Furu Ram and another, (2011) 8 SCC 613;** to contend that a party who played fraud has no equities in law and can be thrown at any stage of litigation.

[31]. Besides citing the aforesaid precedents, learned counsel for the respondent also cited **Ram Chandra Arya vs.**

Man Singh and another, 1968 AIR (SC) 954 to supplement his arguments that Order 32 Rule 15 CPC read with Order 21 Rule 89 and Rule 90 CPC mandated the appointment of Court Guardian in case of lunatic. Decree against such lunatic without appointment of guardian is a nullity.

[32]. In the context of Sections 11 and 12 of the Contract Act, learned counsel relied upon **Sona Bala Bora and others vs. Jyotirindra Bhattacharjee, 2005(2) RCR (Civil) 655** to contend that a contract would be vitiated, if the consent of either party is given by a person of unsound mind as provided under Section 11 of the Contract Act. As per Section 12 of the said Act a person is said to be of sound mind for the purposes of making contract, if at the time when he makes, is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

[33]. At last learned counsel relied upon **Savitri Pandey vs. Prem Chandra Pandey, (2002) 2 SCC 73** to contend that no person can be permitted to flout the course of justice by his or her overt or covert acts. The applicability of the judgment in the context of right of appeal against decree passed under Section 13-B of the Act would remain open for consideration, but not in the present case as in the present case the respondent was relegated to the remedy of filing application before the same

Court by which the judgment and decree under Section 13-B of the Act was passed.

[34]. Having given thoughtful consideration to the submissions made by the either side, it is found that it is a case of calculated fraud upon the respondent as well as upon the Court. The voluminous record produced on record suggested that the respondent-wife was very much in the house of the appellant, even after a decree of divorce granted by the trial Court under Section 13-B of the Act. She was being treated in the Hospital and was under the state of intoxication being a patient of Schizophrenia. Even the Doctor was examined by the respondent herself, who gave treatment chart of medicine meant for morning and evening. Respondent-wife remained in the company of husband even after passing of decree of divorce and at the relevant stage she was recipient of letters sent by the ladies/paramilitary/colleagues and has demonstrated on record.

[35]. The legal submission made by the learned counsel for the respondent in terms of requirement of law under Sections 13-B(2) and 23 of the Hindu Marriage Act and Sections 11 and 12 of the Contract Act, in considered opinion of this Court are worth appreciation and reliance in the present case. Appellant did not inform his Department regarding the divorce in time as he informed about the divorce only on 07.06.2010.

[36]. The precedents cited by the learned counsel for the appellant have no bearing to the facts of the present case. The living of the respondent in the house of appellant was the result of some calculated move by the appellant.

[37]. The statements made by the respondent during first and second motion were the result of intoxication and respondent was not competent to make such submission being hit by Sections 11 and 12 of the Contract Act and also incapacitated on mental condition and she was not to be represented by herself, rather she has to be represented by her guardian. It is a settled principle of law that fraud is such an instinct which kills even *bona fide* litigation fought upto the highest level.

[38]. On detection of fraud, even the decree affirmed by the highest court can be nullified as the fraud vitiates all solemn acts. Perpetrator of the fraud can be thrown out of the litigation at any stage. The precedents cited by the respondent on the aforesaid subject matter have force of law and the alleged sanctity attached to the statements made by the respondent during first and second motion loses significance in the eyes of law.

[39]. We would have taken strong exception to the tempering

in translated documents Ex.P-20 as pointed out by learned counsel for the respondent, but learned counsel for the appellant while rejoining the arguments fairly conceded that it has happened due to his processing of computer data while typing the translated version of the documents, as the computer took already submitted data due to inadvertence. Since the learned counsel for the appellant has tried to explain the aforesaid flaw by attributing some inadvertent mistake to the office functioning, we do not want to rake up the issue any more.

[40]. As a result of aforesaid discussion, this Court is not in agreement with the submissions made by the learned counsel for the appellant. Consequently, the appeal is found to be totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

May 17, 2016

Atik

(M. JEYAPPAUL)
JUDGE