

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

(226)

FAO-M-362-2016

Decided on: August 29, 2017.

Manpreet Kaur

.... Appellant

Versus

Gurdian Singh

..... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Ivneet Singh Pabla, Advocate, for the appellant.

Mr. Rajesh Duhan, Advocate, for the respondent.

M.M.S. BEDI, J (ORAL)

Appellant-wife and the respondent-husband were married on 23.04.2015 as per the marriage certificate brought to the notice of this Court but by allegedly concealing the said date and claiming that the marriage had taken place on 23.04.2014, a petition under Section 13-B of the Hindu Marriage Act for dissolution of marriage by decree of divorce by mutual consent was filed on 12.08.2015 i.e. within a period of four months of the actual date of marriage. The said petition was decided on 09.03.2016.

The wife has filed the present appeal under Section 28 of the Hindu Marriage Act.

A fraud is alleged to have been played not only upon the appellant but also upon the Court as she was persuaded to participate in proceedings under Section 13-B of the Hindu Marriage Act with a false promise that the respondent would be able to settle abroad on marriage basis, in case the appellant agreed to consent to divorce by mutual consent.

Learned counsel for the respondent has vehemently opposed the appeal contending that the appeal is not maintainable under law.

We have heard learned counsel for the parties.

Since the plea of fraud has been raised by the appellant, which prima facie is apparent from the marriage certificate and the date of application under Section 13-B of the Hindu Marriage Act, the remedy available to the appellant is to move an application for setting aside the decree of divorce by mutual consent by raising all the pleas of fraud having been played upon her as well as upon the Court. The said application is maintainable as has been laid down by this Court in FAO-M-213-2007 titled Amita Joshi Vs. Sandeep Kumar, decided on 21.08.2017.

Similar view has been taken by the Andhra Pradesh High Court in **Anita Vs. R. Ram Bilas, 2003 (1) CCC 284 (AP)**, wherein a decree under Section 13-B of the Hindu Marriage Act had been obtained. One of the spouses challenged the same claiming that fraud had been played on the Court. It was held in such circumstances that the remedy would be not a separate suit but the review petition before the same Court. The said Court would certainly have inherent jurisdiction to set aside the decree in case the fraud is established. Even otherwise, it is settled principle of law that when a consent decree is obtained by playing a fraud on the Court, proper course for the parties is to move the Court that had rendered the decision. In this context, we draw support from the following judgments of Supreme Court and different High Courts:

- (1) R. Rajanna Vs. S.R. Venkataswami, AIR 2015 SC 706;
- (2) Horil Vs. Keshav and another, AIR 2012 SC 1262;
- (3) Santosh Puri Vs. Anil Puri, 2012 (24) RCR (Civil) 294;

- (4) Jugal Kishore Somani Vs. Raja Ram, 2009 (5) RCR (Civil) 637;
- (5) Wassan Singh and others Vs. Lakha Singh and another, 2005
(2) RCR (Civil) 791;
- (6) Naron Abubacker Kasam Vs. Shanthilal Babulal Jain, 2010 (3)
KHC 208.”

The above said judgments, no doubt, had been rendered in context to the compromise decrees by Civil Courts but the principle of law laid down in the said judgments is equally applicable to the proceedings under Hindu Marriage Act and the decree of divorce which is obtained under Section 13-B of the Hindu Marriage Act. In **Sarabjit Singh Vs. Gurpal Kaur 2013 (3) RCR (Civil) 125**, relying upon **Indian Bank Vs. Ms. Satyam Fibres (India) Pvt Ltd. AIR 1996 S.C. 2592**, it was held that an order obtained by fraud can be reviewed under inherent powers if it is obtained by fraud.

In view of the above said discussion, we are of the considered opinion that appropriate remedy in the peculiar circumstances of this case would be to approach the Court of District Judge, Kurukshetra, who has passed the consent decree.

In case, the appellant files an application for setting aside the judgment and decree dated 09.03.2016 on the ground that a fraud has been played by specifying the specific grounds, the said application will be entertained and will be adjudicated on merits by giving fair opportunity to the appellant to lead evidence with the same right to the respondent to rebut the pleas and evidence of the appellant, in accordance with law.

It will be appreciated in case the application filed by the appellant is decided within a period of eight months to one year.

The appeal is disposed of accordingly relegating the appellant to avail the above said remedy.

(M.M.S. BEDI)
JUDGE

August 29, 2017.
harsha

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No