

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-909 of 2017(O&M)

Date of Decision : 28.08.2017

Shelly Goel

..... Petitioner

Versus

Bhushan Aggarwal

..... Respondent

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

Present : Mr. Ajay Kalra, Advocate
for the appellant.

Mr. D. D. Gupta, Advocate
for the respondent.

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

In a petition filed on 15.07.2013 under Section 13-B of the Hindu Marriage Act, a decree of divorce was granted on mutual consent on 20.01.2014 by Ms. Neena Chaudhary, District Judge, Family Court, Ambala. The appellant wife filed an application for setting aside the decree of divorce on 28.07.2014 on the ground that a fraud had been played upon her. The appellant took up a plea in her application that the parties had married on 11.03.2012 and stayed with respondent till April, 2014. The applicant had given birth to twin children on 11.10.2013 at DMC, Hospital, Ludhiana. She averred in her application that the respondent husband is an educated, clever and shrewed businessman having huge property. In July,

typed papers telling her that same were required for his rice mill and commission agency business. She was made to sign those papers in good faith and a bit thereafter the respondent had taken her to Ambala Courts telling her that he had to obtain sales tax number for his business as such she was again made to sign some papers in the Court premises in good faith without disclosing her the true impact of the proceedings in that office. She claimed that the judgment and decree dated 20.01.2014 had been obtained by fraud without disclosing the true facts before the Court.

The Additional District and Sessions Judge, Ambala exercising the power of the District Judge, Family Court, without considering the plea of fraud, dismissed the application on the ground that it was not maintainable as express remedies are available to the applicant to challenge the decree of divorce either by filing an appeal or by an dependent suit before appropriate forum, vide order dated 30.11.2016.

In view of application having been dismissed, the wife has preferred this first appeal under Section 28 of the Hindu Marriage Act against the decree of divorce under Section 13-B of the Hindu Marriage Act claiming that the same has been obtained by fraud and her application for setting aside the decree obtained by fraud having been dismissed wrongly vide order dated 30.11.2016.

In order of establish fraud, a photograph has been placed on record indicating that on 14.02.2014, the appellant had attended the marriage of the sister of the respondent alongwith the minor child in the lap.

Taking into consideration the circumstances of the case, we are of the opinion that the plea of fraud having been played on the Court as well as on the appellant, should have been decided by the same Court by

considering the facts and circumstances raised by the appellant. Since, we are of the opinion that the plea of fraud can be adjudicated upon by the same Court in which the fraud is alleged to have been played, the order dated 30.11.2016 is absolutely illegal, improper and liable to be set aside. The District Judge, Family Court, Ambala should have considered the plea of fraud for setting aside the decree dated 20.01.2014 by appreciating the evidence produced on the record by the parties. The Family Court has wrongly formed an opinion that the application under Section 151 CPC is not maintainable. The Family Court has wrongly placed reliance on **Hardeep Kaur Vs. Ravinder Singh 2011(1) RCR(Civil) 643(P&H)** as the law laid down is not applicable to the facts of the present case. We have relied upon the following judgments of the Supreme Court and other High Courts wherein it has been held that when the fraud is alleged to have been played on the Court itself, the remedy to the aggrieved party would be to approach the same Court for rectification of the wrong done by fraud on the said party:

- 1) R.Rajanna Vs. S.R. Venkataswami, AIR 2015 S.C. 706
- 2) Horil Vs. Keshav and another, AIR 2012 S.C.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

In view of the said circumstances, the appeal is allowed. Order

dated 13.11.2016 is hereby set aside. The application filed by the appellant before the trial Court is held maintainable. The Family Court, Ambala will be required to re-assess the evidence produced by the parties and arrive at a conclusion, whether the judgment and decree dated 20.01.2014 is not vitiated by the vice of fraud having been played on the Court as well as on the appellant. In case, the parties intend to lead any additional evidence, opportunity may be granted to the parties.

The parties are directed to appear before the trial Court on 07.10.2017 for re-consideration of the matter regarding the plea of fraud raised by the appellant. It will be open the Court to set aside the decree dated 20.01.2014 in case the plea of fraud is established by the material produced/to be produced before the said Court. During pendency of the aforesaid proceedings, the operation of the decree dated 20.01.2014 will remain in abeyance.

The Family Court is directed to decide the application of the appellant within a period of six to eight months after the first date of appearance i.e. 07.10.2017.

(M.M.S.BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

28th August, 2017
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Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No