

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal (M) No. 221 of 2017**

Ashish Chaturvedi Son of L.P.Chaturvedi, Aged about 37 years, R/o Arya Nagar, Kohka Bhilai, Tahsil and District Durg, Chhattisgarh.

---- Appellant

Versus

Smt. Pooja Chaturvedi Wife of Ashish Chaturvedi, aged about 28 years, R/o Near Bajrang Mandir, Civil Court, Bhanupratappur, Tahsil Bhanupratappur, District Kanker, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Vinod Kumar Sharma, Advocate.
For Respondent	:	Shri Abhishek Singh, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, J.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****26/02/2018**

1. This is an appeal by the husband against refusal of the Family Court to accept an application under Section 13(B) of the Hindu Marriage Act, 1955; for short, the Act, submitted by him and his wife, Respondent herein.
2. Heard the learned counsel for the Appellant and the learned counsel for the Respondent.
3. The fact of the matter remains that the parties stand admitting of having arrived at certain settlement and having filed an application for divorce on mutual consent under Section 13(B) of the Act. The wife had, admittedly,

withdrawn the consent when the matter was taken up by the Family Court for consideration.

4. It is not within the domain of the Family Court to thereafter enquire as to whether the parties have performed the conditions which led them to any settlement which would have been the foundation of the application for divorce on mutual consent. The fundamental duty of the Court in such application is to ascertain whether such an application is actuated by malice or prompted by such consideration as could be treated as unlawful. If not, the Court will wait for the gestation period which is statutorily prescribed and thereafter will act upon that application, if the continued consent of both the parties to the marriage for the divorce continues to exist at that point of time.
5. In the aforesaid view of the matter, the Family Court was well within the jurisdiction to dismiss the application for divorce under Section 13(B) of the Act. We cannot entertain any appeal by the husband on the face of the wife's refusal to agree to a decree of divorce on consent. This appeal therefore fails.
6. In the result, this appeal is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Sharad Kumar Gupta)
JUDGE