

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(224)

FAO-M-358-2014 (O&M)

Decided on: February 12, 2018.

RAMANDEEP KAUR

.... Appellant

Versus

AMANPREET SINGH

..... Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Anoop Singh, Advocate,
for Mr. Ashish Verma, Advocate
for the appellant.

Mr.P.K.S. Phoolka, Advocate
for the respondent.

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

The wife had obtained ex parte decree of divorce vide judgment and decree dated 06.05.2014.

The appellant has filed this appeal claiming that a fraud has been played upon her as well as on the Court. It is averred in the grounds of memorandum of appeal that she married with the respondent on 31.05.2013 after running away from her house. Initially, both families opposed the marriage, but they married with a hope that families would reconcile. The appellant claims that she was being humiliated by her in-laws and they used to spoil the mind of respondent against her, as the family members of the respondent entered into an conspiracy to get rid of her. The respondent in a clever manner asked the appellant to stay in a paying guest

accommodation at Dabwali, District Sirsa, with the promise that he would keep visiting her and he would satisfy the ego of his family members. During her stay in the paying guest at Dabwali, District Sirsa, the entire expenses were borne by the respondent. The divorce petition was filed in the Court to satisfy his family members with an understanding that same would be withdrawn in the midway. The divorce petition was got filed before the trial Court on 28.02.2014 whereas the date of marriage was mentioned in the petition as 31.05.2013. The statutory bar of Section 14 of the Hindu Marriage Act does not permit any Court to entertain a petition for dissolution of marriage before expiry of one year from the date of marriage.

Section 14 of Hindu Marriage Act reads as follows;

14. No petition for divorce to be presented within one year of marriage .

(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, {unless at the date of the presentation of the petition one year has elapsed} since the date of the marriage: Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented {before one year has elapsed} since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to

present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the {expiry of one year} from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the {expiration of the said one year} upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the {expiration of one year} from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the {said one year} ”.

In context to the above said provisions of law, we have seen the impugned judgment and decree. The date of marriage is mentioned in the petition as 31.05.2013, whereas, the date of filing of the divorce petition is 28.02.2014 and even ex parte decree of divorce was also passed within a period of one year. Although the appellant-wife had herself filed petition in contravention to the provisions of law, but it is settled principle of law that there is no estoppel against the statute and against any action done in contravention to the statutory provisions and the same cannot be legalized even by consent. By mutual consent of a party the statutory provisions cannot be permitted to be violated. The respondent being ex parte, the plea

of fraud having been played on Court as well as the appellant is believable. A perusal of the impugned judgment and decree indicates that no leave to file the divorce petition before one year of the marriage had been obtained. The judgement and decree dated 06.05.2014 being contrary to the mandatory provisions of law are not sustainable.

The appeal is accordingly allowed and the judgment and decree dated 06.05.2014 are hereby set aside. However, this judgment will not, in any manner, prejudice the rights of the parties to seek divorce in accordance with law, as the period of one year has now expired. Learned counsel for the respondent has vehemently contended that the appellant had voluntarily obtained decree of divorce ex parte against the respondent and now her mind having changed she wants to grab money from the respondent under the garb of the present appeal.

We have considered the said contention of respondent and are of the opinion that the respondent had intentionally remained ex parte before the lower Court which corroborates the plea taken up in the appeal. Even otherwise there being no estoppel against statute, the judgment and decree having been passed within a period of one year deserves to be set aside as no circumstances have been considered by the lower Court to permit or grant of leave to file the divorce petition before the expiry of one year.

The counsel for the respondent has also submitted that no application for recalling the order passed by the lower Court has been filed by the appellant as such the appeal is not maintainable.

We have carefully considered the said contention of the counsel for the respondent and are of the opinion that after the grant of decree of divorce, the Court becomes functus officio.

It is settled principle of law that the fraud vitiates all the actions. In this context reference can be made to judgment of criminal jurisprudence. The decree having been obtained, in any manner, in contravention to the statutory provisions of Section 14 of the Hindu Marriage Act, the same can be challenged in appeal before this Court.

(M.M.S. BEDI)
JUDGE

February 12, 2018.
tarun

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No