

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-249 of 2016 (O&M)

Date of Decision: 31.10.2018

Roshni

...Appellant

Versus

Ram Mehar

...Respondent

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL**

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

Mr.Rajesh Bansal, Advocate for the respondent.

RAKESH KUMAR JAIN, J. (Oral)

This appeal is directed against the order dated 5.3.2014 by which decree of divorce by mutual consent has been granted to the parties in terms of Section 13-B of Hindu Marriage Act, 1955 (for short 'the Act').

In brief, the parties got married on 9.5.1995 as per Hindu Rites and ceremonies. They have got eight children out of the wedlock. The appellant has alleged that she has never consented to apply for divorce by mutual consent. Her husband-respondent is a clerk of the counsel in the trial Court who has manipulated the decree of divorce against her as she was not taken into confidence that his signatures are being taken on the petition and reply for the purpose of seeking divorce by mutual consent. He has also submitted that though the decree was passed on 5.3.2014 but thereafter, a *Panchayatnama* was prepared on 1.4.2014 in which there is no reference to the decree. It is also submitted that the appellant had filed a

Criminal Miscellaneous Petition bearing CRM-M No.26166 of 2014 in this Court for the purpose of registration of the FIR against her husband-respondent but the said petition was withdrawn by the appellant after granting liberty to take resort to Section 156(3) of the Code of Criminal Procedure, 1973.

After notice, the Court had tried to resolve the dispute between the parties by way of mutation but ultimately the appeal is otherwise filed with a delay of 715 days alongwith an application filed under Section 5 of the Limitation Act, 1963 for the purpose of condonation of delay which is yet to be decided.

Counsel for the respondent has submitted that since it is a decree by way of mutual consent, the appeal is not maintainable in view of Section 96(3) of the Code of Civil Procedure, 1908 (for short 'the CPC') in which it is provided that "no appeal shall lie from a decree passed by the Court with the consent of the parties" but counsel for the appellant has referred to a decision of this Court in *Hardeep Kaur Versus Ravinder Singh 2011(1) RCR(Civil) 643*.

During the course of hearing, counsel for the appellant has prayed that the appeal may be allowed to be withdrawn and the appellant may be allowed to file an application before the trial Court to plead fraud for the purpose of recalling of the order which had been allegedly received by playing fraud on the appellant as well as on the Court. Counsel for the respondent has vehemently objected in this regard. Therefore, the present appeal is hereby disposed of and it is ordered that grounds of appeal shall be taken as an application filed before the trial Court against the respondent by which the decree of divorce by way of mutual consent was

granted. Thus, the matter is remanded back to the trial Court for fresh consideration of the allegations made by the appellant-wife against whom the consent was alleged to have been procured fraudulently. The parties are directed to appear before the trial Court on 3.12.2018.

(Rakesh Kumar Jain)
Judge

October 31, 2018
Meenu

(Anupinder Singh Grewal)
Judge

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