

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-140-2018 (O&M)
Date of Decision:- 12.1.2018

Apurva Relhan

... Appellant

Versus

Sachin Relhan

... Respondent

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

Present:- Mr. Parminder Singh, Advocate for the appellant.

M.M.S. BEDI, J.

Vide judgment dated 9.10.2017, the marriage of the appellant-wife with respondent-husband was dissolved by a decree of divorce under Section 13-B of the Hindu Marriage Act, 1955, on the basis of the settlement arrived at between the parties regarding maintenance, permanent alimony and custody of the child. It was *inter alia* agreed that the minor Sahaj Relhan will live under care and custody of respondent-husband Sachin Relhan, though the appellant-wife will have visitation rights after prior intimation to him. While granting the decree of divorce by mutual consent, in terms of consent under Section 13-B of the Hindu Marriage Act, 1955, the Family Court had ordered that the parties shall be bound by the terms and conditions of the settlement.

The present appeal has been preferred by the appellant-wife for setting aside the judgment and decree dated 9.10.2017, on the ground that the respondent-husband has failed to abide by the terms of the settlement regarding the visitation rights of the appellant-wife, as he has shifted the

child from house No.528, Sector-6, Karnal and is no more in connection/communication with the appellant-wife, in order to enable her to enforce her rights of visitation as agreed to and directed vide judgment and decree dated 9.10.2017. Counsel for the appellant-wife has argued that in case, the terms and conditions of visitation rights are not to be implemented/executed by the respondent-husband, then the judgment and decree dated 9.10.2017 are liable to be set aside.

We have considered the contentions of counsel for the appellant-wife in context to the maintainability of the appeal. The endeavour of the appellant-wife is to implement the terms and conditions of the settlement arrived at between the parties as incorporated in the decree dated 9.10.2017. The parties have been held to be bound by the terms and conditions of the settlement. In case the appellant-wife wants the enforcement of the legal rights accruing from the decree dated 9.10.2017, she has got a legal remedy available to her to execute the decree/order, as per the legal rights vested in her, under the provisions of Order 21 Rule 32 of the Code of Civil Procedure, as the decree has got the effect of a direction/mandatory injunction against the parties. Even otherwise any order of the Court is executable like a decree as per provisions of Section 36 of the Code. It appears that no such remedy has been availed by the appellant-wife.

We have also considered the maintainability of the appeal from another angle put forth by the appellant-wife. The appellant-wife claims that the decree has been obtained by playing fraud on the Court by representing that the marriage be dissolved subject to the terms and conditions of the

settlement, which conditions were not to be complied with by the respondent-husband. In said situation, the appropriate remedy for the appellant-wife is to approach the same Court alleging that fraud has been played on the Court and to seek the setting aside the decree obtained with the consent of the parties, as per the law laid down by this Court in Amita Joshi Versus Sandeep Kumar FAO-M-213 of 2007 decided on 21.08.2017 and as per the law laid down in Sarbjit Singh Versus Gurpal Kaur, 2013 (3) RCR (C) 125 and Indian Bank Versus M/s Satyam Fibers (India) Pvt. Ltd., AIR 1996 SC 2592.

In view of the above discussion, this appeal is held to be not maintainable, on account of the above said two alternative remedies available to the appellant-wife.

The present appeal along with miscellaneous application for condonation of delay are dismissed without prejudice to the right of the appellant-wife to avail the above said remedies.

(M.M.S. Bedi)
Judge

(Gurvinder Singh Gill)
Judge

12.1.2018
pankaj

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No