

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-M No. 205 of 2018 (O&M)

Date of decision: 06.07.2018.

Sandeep Kaur

..... Appellant.

Versus

Jagjit Singh

..... Respondent.

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present:- Mr. Vijay Rana, Advocate, for the appellant.

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

The parties before this Court, i.e. the appellant - Sandeep Kaur and the respondent - Jagjit Singh, had obtained a decree of divorce under Section 13-B of the Hindu Marriage Act, 1955 ('Act' - for short) vide judgment and decree dated 31.05.2016.

An appeal under Section 28 of the Act has been filed after expiry of 584 days claiming that with the intervention of respectables and common friends in view of the interest of minor children born out of the wedlock, a compromise has been arrived at between the parties on 21.03.2018. It is averred that both the parties have started living together w.e.f. 18.03.2018 and at present there is absolutely no grudge or grievance against each other. In view of the above-said subsequent events, the present appeal has been filed for setting aside the judgment and decree of divorce obtained by the parties with the consent of each other.

We have considered the maintainability of the appeal in the light

of the provisions of Section 28 of the Act as well as in the light of the provisions of Section 96 (3) of the Code of Civil Procedure, 1908 ('CPC' - for short). It is settled rule of law that appeal is a creation of Statute. Section 96 (3) of the CPC specifically provides that no appeal shall lie from a decree passed by the Court with the consent of the parties. It is also not disputed that when a decree is obtained without free consent of the parties, it is always open to any of the parties to approach the same Court for setting aside of the consent decree by establishing the ground of consent having been obtained by fraud, undue influence or coercion. In the present case, the appeal has not been filed on the basis of fraud having been played by any of the parties but the appeal has been filed on the basis of subsequent events of consent having been withdrawn after obtaining the decree of divorce. When confronted regarding the maintainability of the appeal, learned counsel for the appellant relies upon a Division Bench judgment of this Court in Krishna Khetarpal v. Satish Lal, 1987 (1) HLR 36, wherein the basic question to be determined was whether a marriage could be dissolved by a decree of divorce on the basis of compromise without following the procedure under Section 13B (2) and without satisfying the requirement of Section 23 (1) (c) of the Act. So far as the maintainability of the appeal against a consent decree is concerned, few parameters have been laid down in para No.5 of the judgment holding that an appeal against a consent decree is not a bar subject to the approval of the Court on satisfaction of certain terms mentioned therein. The learned counsel for the appellant has not been able to satisfy this Court that any such condition is fulfilled in the present case. Moreover, the said judgment does not lay down any absolute rule of law as to under what circumstances an

appeal would lie against a consent decree in a matrimonial case.

In view of the above circumstances, we have carefully considered the maintainability of the appeal against the consent decree, being filed after a lapse of about two years, and are of the considered opinion that the present appeal against the consent decree is not maintainable solely on the ground that on the basis of subsequent compromise, the parties have started living together. It is observed that there is no bar for husband and wife to re-unite on the basis of any settlement arrived at between them subsequent to having been separated by a process of law. Taking into consideration the spirit of Section 23 (2) (c) of the Act, we are of the opinion that it is always recommended that endeavour should be made by the Courts at all times to bring about reconciliation between the parties. There is no bar for withdrawing the consent in case better sense prevails in the life of both the spouses.

Though we appreciate re-union of the parties but on account of lack of statutory jurisdiction to entertain the appeal, we are not inclined to entertain the appeal. However, we are of the opinion that in peculiar circumstances of this case, both the parties can approach the same Court or the successor Court of Additional District Judge, Jalandhar, which had dissolved the marriage with the consent of the parties on 31.05.2016, to seek setting aside of the decree of divorce. It will always be open to the said Court to set aside the decree of divorce obtained by mutual consent on the basis of compromise arrived at between the parties on 21.03.2018 taking into consideration the fact that the parties have re-united and started living together along with minor children. Setting aside of the decree of divorce

would be in larger interest not only for the spouses but it would be beneficial for the betterment and welfare of minor children born out of the wedlock. It will also be open to the parties to apprise the Court concerned the circumstances indicative of the mutual consent being not with free will of the parties.

With the above observations, the appeal is dismissed as not maintainable. However, the parties would be at liberty to file a joint petition/application before the same Court or the successor Court of Additional District Judge, Jalandhar for setting aside of the consent decree dated 31.05.2016. In case any petition/application is filed, the same shall be decided expeditiously by recording the statements of the parties. We observe that in case any such application is filed within a period of one month, the delay in filing the same would be condoned.

We have disposed of this appeal *in limine* in peculiar circumstances of this case without laying down any judicial precedent. The application for condonation of delay in the aforesaid circumstances is also dismissed.

(M.M.S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

06.07.2018
Ramesh

Whether speaking/reasoned : Yes

Whether reportable : Yes