

FAO-M-207-2018 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO-M-207-2018 (O&M).
Decided on: August 2, 2018.**

Gurpreet Kaur

.. Appellant

VERSUS

Gurpreet Singh

.. Respondent

*** * ***

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

*** * ***

**PRESENT Mr.Sukhmeet Singh, Advocate,
for the appellant.**

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

The present appeal is against the judgment and decree dated 27.3.2018, by virtue of which the marriage of the appellant and the respondent has been dissolved by a decree of divorce under Section 13-B of the Hindu Marriage Act.

A perusal of the terms and settlement arrived at between the parties indicate that 2 FDRs of Rs.75 lac each in favour of two minor daughters were made. A sum of Rs.8 lac had also been paid to the appellant-wife as per the agreement arrived at between the parties prior to the passing of the decree of divorce by mutual consent. The wife has preferred this appeal stating that she has not been granted any permanent alimony.

We have considered the facts and circumstances of the present case. We had required the counsel for the appellant to satisfy this

Court that the appeal is maintainable against the order passed with the consent of the parties.

Counsel for the appellant has made reference to the judgment in **Krishna Khetarpal Vs. Satish Lal, 1986 (2) PLR 608**, a perusal of which indicates that a question whether an appeal under Section 28 of the Hindu Marriage Act, would be competent against the consent decree in view of the provisions of Section 96 (3) CPC, had been gone into in that case. In para 5 of above cited judgment, it was held that the appeal would be maintainable only if the Court is satisfied regarding the following circumstances: -

- "(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of S. 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and*
- (b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of S. 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and*
- (bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and*
- (c) the petition (not being a petition presented under Section 11) is not presented or prosecuted in collusion with the respondent, and*

(d) there has not been any unnecessary or improper delay in instituting the proceeding and
(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly."

The present appeal does not fall in any of the above referred categories. It is not the case of the appellant that her consent had been obtained by any coercion, fraud or undue influence but she claims that she is entitled for permanent alimony under the law. It appears that the decree of divorce has been granted after the parties agreed to the terms and conditions which include the claim of the appellant for alimony for herself and the children.

Counsel for the appellant admits that a sum of 8 lac paid to the appellant was on account of costs of the marriage arrangements and dowry articles which included the price of Maruti car.

The circumstances regarding maintainability of the appeal have also been considered by this Court in **Amita Joshi Vs. Sandeep Kumar, FAO-M-213 of 2007, decided on 21.08.2017**, wherein it has been held that when a consent decree is passed and one of the spouse levels allegations that consent was not free, the appropriate remedy is to approach the same Court.

We have considered the contentions of the learned counsel for the appellant in the light of provisions of Section 96 (3) CPC as well as under Section 28 of the Hindu Marriage Act and also in the light of judgment in **Krishna Khetarpal** (supra), and are of the opinion that the

FAO-M-207-2018 (O&M)

appeal will not be maintainable on the grounds mentioned in the grounds of appeal.

The appeal is dismissed without prejudice to the rights of the appellant-wife under the provision of Section 25 of the Hindu Marriage Act which enables a spouse to move an application for permanent alimony even after passing of the decree for divorce.

(M.M.S. BEDI)
JUDGE

August 2, 2018.
raj arora

(ANUPINDER SINGH GREWAL)
JUDGE

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