

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

**FAO-M-247 OF 2018
DATE OF DECISION : 29.8.2018**

Nidhi Dhankar

...Appellant

versus

Ajit Singh

...Respondent

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

Present : Mr. Ram Kumar Saini, Advocate,
for the appellant.

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

Nidhi Dhankar appellant-wife has challenged the judgment and decree dated 16.4.2018 passed under Section 13-B of the Hindu Marriage Act, dissolving the marriage of appellant and respondent.

It has been urged that a fraud has been played on the Court as well as on the appellant by the respondent. The appellant claims that on 8.10.2017, she was taken by her husband, who was on leave from Indian Navy to the Court premises at Jhajjar, on the pretext that they had decided to transfer one plot situated in the village, in her name and after reaching the Court premises, the respondent met two Advocates who obtained signatures of the appellant on some documents and thereafter the respondent brought her back to the matrimonial

house. She was again taken to the Court premises on 16.4.2018 on the pretext that mutation of the plot had to be sanctioned in her favour and she was required for that purpose. She blindly trusted her husband and gave her signatures on blank papers and went back.

In order to substantiate the plea that the order dated 16.4.2018 is a fictitious and sham document, counsel for the appellant has placed reliance upon the incidents after 16.4.2018, indicating that the parties had been staying together and had been going together at different places. Annexure A-1 has been produced on record to show that on 25.4.2018, the appellant was taken by the respondent along with the minor child to Mumbai and then to Shirdi where they stayed in a hotel. Annexure A-2 has been produced on record to show that respondent had taken the appellant and the minor daughter to Bangalore where they stayed in a house on rent for one month. The appellant was maltreated there. On 15.5.2018, she was given beatings and forced to get a sum of ₹10,000/- transferred. As such, father of the appellant transferred a sum of ₹5000/- through NEFT.

We have taken into consideration the circumstances put forth before us to show that the impugned order has been obtained fraudulently by the respondent.

On asking of the Court, counsel for the appellant has submitted that no application was filed before the District Judge, Jhajjar, informing the fraud having been played upon the

appellant. It is not out of place to mention here that it is a settled principle of law that if fraud is played with the Court, a petition for review is maintainable. In this context, reference can be made to case titled, **Anita v. R. Ram Bilas 2003 (1) CCC 284 (AP)**, where a decree under Section 13-B of the Hindu Marriage Act was obtained and the same was challenged by one of the spouses claiming that fraud had been played on the Court. It was held that if fraud is played on a party, then a separate suit has to be filed but if fraud has been played on Court, then review petition is maintainable. This Court in **FAO-M-213 of 2007 'Amita Joshi v. Sandeep Kumar'**, decided on 21.8.2017 relying upon the judgment of **Sarabjit Singh v. Gurpal Kaur, 2013 (3) RCR (C) 125** and **Indian Bank v. M/s Satyam Fibres (India) Pvt. Ltd. AIR 1996 SC 2592**, held that the Court has always got inherent power to set-aside the order which has been obtained by playing fraud.

In view of the above said circumstances, we are of the considered opinion that it will be a question of law and fact to determine whether the mutual decree of divorce had been obtained by playing fraud on the Court, as per the circumstances mentioned in the appeal. The appellant is relegated to the alternative remedy of filing an application before the lower Court as per law laid down in the aforesaid judgments and seek the setting aside of decree of divorce by approaching the same Court which had passed the decree on 16.4.2018. It is ordered that in

case application for setting-aside the judgment and decree dated 16.4.2018, is filed within a period of one month from today, the same shall be entertained and decided by the lower Court after giving an opportunity to the respondent, in accordance with law. It is further directed that the lower Court shall make earnest endeavour to decide the application expeditiously, preferably within a period of six months after the receipt of response from the respondent. The judgment and decree dated 16.4.2018 will remain inoperative during the pendency of the application.

Any observation made by this Court forming the opinion regarding prima-facie fraud will not, in any manner, prejudice the rights of the respondent as the observations have been made on the basis of documents brought to our notice. The relevancy and admissibility of the documents would be required to be established in accordance with law.

We have opted to dispose of this petition in limni, with an objective to prevent the delay in adjudication of the matter.

The appeal is dismissed being not maintainable.

(M. M. S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

AUGUST 29, 2018
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| 1. | Whether speaking/reasoned : | YES/NO |
| 2. | Whether reportable : | YES/NO |