

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO-M-80-2018 (O&M)  
Date of Decision:- 20.3.2018

Pinki ... Appellant

Versus

Sandeep ... Respondent

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

Present:- Mr. G.S. Sandhu, Advocate for the appellant.

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**M.M.S. BEDI, J.**

It has *inter alia* been argued that the condition of handing over of minor girl Yogita after lapse of one year to the respondent-husband vide order 14.10.2015, was not within the ambit of the jurisdiction of the District Judge deciding an application under Section 13-B of the Hindu Marriage Act, 1955, as such the condition of handing over of the minor girl Yogita to the respondent-husband is contrary to the right of a wife to give the custody of the minor child, which is certainly in the welfare of a female child.

The present appeal has been filed under Section 28 of the Hindu Marriage Act, 1955. The respondent-husband had sought the execution of the order dated 14.10.2015, wherein the appellant-wife had filed objections. It appears that the objection petition has been dismissed and a revision petition filed against the order of the executing Court stands disposed of as withdrawn in civil revision No.1554 of 2018.

We have considered the present appeal in context to the provisions of Section 96(3) CPC, which provides that no appeal shall lie

from a decree passed by the Court with the consent of the parties. Since, the appellant-wife has opted to file the appeal against an order, which has been passed on the basis of the consent of both the parties, we express our inability to entertain the appeal in the light of the statutory bar under Section 96(3) CPC.

Since the condition of handing over of the minor girl Yogita in proceedings under Section 13-B of the Hindu Marriage Act, 1955 has been challenged on the ground of jurisdiction as well as on the ground of a fraud having been played on the appellant-wife and the Court, the appropriate remedy available to the appellant-wife would be to approach the same Court as per the ratio of the judgment 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, wherein it has been held that the Courts have got inherent power to set aside an order, which has been obtained by playing fraud on the Court. The said judgments have been followed by this Court in Amita Joshi Versus Sandeep Kumar in FAO-M-213 of 2007 decided on 21.08.2017. The executing Court has also no jurisdiction to go beyond a consent order, as such we dispose of this appeal relegating the appellant-wife to approach the Court of District Judge, Karnal with an application to seek the exclusion of the one of the conditions of handing over of the minor girl Yogita, imposed upon the appellant-wife on all the grounds available to her without disturbing the decree of divorce obtained by mutual consent.

In the interest of justice, it is ordered that any application, in the light of abovesaid observations, if filed, within a period of one month from today, would be entertained. The operation of the condition of handing

over of the minor girl Yogita to the respondent-husband will not be implemented till the decision of the said application.

Any observation made in this order will not prejudice the right of the respondent-husband to seek the custody of the minor girl Yogita or visitation right in accordance with the provisions of law.

The appeal is disposed of with abovesaid observations.

The miscellaneous applications are also disposed of accordingly.

( M.M.S. Bedi )  
Judge

20.3.2018

pankaj

( Gurvinder Singh Gill )  
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No