

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

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**FAO-M-102-2019 (O&M)
Date of Decision : 09.05.2019**

Neetu

... Appellant

Versus

Mohan Singh alias Vicky

...Respondent

**CORAM:HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Vijay Lath, Advocate for the appellant.

RAKESH KUMAR JAIN, J.(ORAL)

This appeal is directed against the judgment and decree dated 14.02.2019 by which petition filed by the appellant along with the respondent under Section 13-B of the Hindu Marriage Act, 1955 (for short 'the Act') for seeking dissolution of their marriage by way of mutual consent has been allowed.

In brief, the facts are that the status of the appellant was of a widow at the time of her marriage whereas the status of the respondent was of a bachelor. The appellant was initially married with Santokh Singh son of Bimla Devi and Mahinder Singh as per Hindu rites and ceremonies. Out of the said wedlock, she had two children, namely,

Parminder Singh (son) born on 13.07.2010 and Kajal (daughter) born on 16.03.2014. Her previous husband Santokh Singh died due to ailment on 15.01.2016. After his death, the appellant got married with the respondent, who is the real brother of Bimla (mother in law of the appellant). They performed their marriage at Mansa Devi Temple, Panchkula on 19.01.2017 and lived as husband and wife in House No. 440, Near Dera Sahib Gurudwara, Panditon Wali Gali, Manimajra, Chandigarh till December, 2018 and thereafter shifted to house No. 864, Tarkhana Wala Mohalla, Manimajra, Chandigarh and resided there till 16.02.2019. It is alleged that the respondent, by playing fraud upon the appellant, got her signatures on a petition, prepared under Section 13-B of the Act, on the pretext that the marriage solemnized by them in the temple has to be necessarily got registered in the Court. It is alleged that the appellant had signed the said petition and also signed the statements suffered by her at the first and second motion stage before the Court. However, she was shocked when the respondent had announced on 16.02.2019 that he has obtained a decree of divorce from her. She engaged Jitender Nagpal, Advocate to make an inquiry about the alleged pronouncement of the respondent that he had got a decree of divorce under Section 13-B of the Act and came to know that the same has been allowed by the ADJ, Chandigarh on 14.02.2019. Thereafter, she applied for the certified copy of the said order and filed the present appeal.

The judgment and decree of the trial Court has been challenged by the appellant, *inter alia*, on the ground that the decree obtained by the respondent is an act of fraud and that the learned Court below has not recorded its satisfaction in terms of Section 13-B(2) while

passing the order.

Counsel for the appellant has submitted that the marriage of the parties was solemnized on 19.01.2017 and they lived as husband and wife till 16.02.2019 whereas the petition under Section 13-B of the Act was filed on 03.05.2018. It is further submitted that the first motion stage statement was recorded before the learned Court below on 03.05.2018 itself and thereafter, the Court had granted them the cooling off period of six months for the purpose of recording the statement at the second motion stage which in fact was recorded on 14.02.2019 and the decree was passed on the same date.

Counsel for the appellant has submitted that the appellant has filed an application with this appeal bearing CM No. 8193-C-2019 under Order 41 Rule 27 of the Civil Procedure Code, 1908 (for short 'CPC') for seeking permission of this Court to lead additional evidence by photographs to show that both the appellant and respondent were together on 27.10.2018 at the time of Karwa Chauth and on 22.12.2018 at the time of the respondent's birthday. The said evidence is sought to be brought on record in order to challenge the decree obtained under Section 13-B of the Act, on the ground that as per Section 13-B(1) of the Act a petition for seeking dissolution of marriage by way of mutual consent could be filed only if both the parties have lived separately for a period of one year or more and that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

At the time of preliminary hearing on 08.04.2019, the appellant was asked to refer to law as to how an appeal under Section 28

of the Act would be maintainable against the decree suffered by way of mutual consent and in this regard Section 96 of the CPC was brought to the notice of the counsel for the appellant.

He has referred to a decision of the Division Bench of this Court rendered in the case of ***Krishna Khetarpal, Headmistress, Government Girls High School, Bhuna Tehsil Fatehabad, District Hissar Versus Satish Lal***, 1986(2) PLR 608 to contend that appeal under Section 28 of the Act against a decree passed under Section 13-B of the Act is maintainable. He has also referred to a decision of this Court rendered in the case of ***Jyoti versus Neeraj Kumar Saini***, 2019 (1) R.C.R.(Civil) 748 in which the aforesaid cited judgment has been referred to while holding that the appeal would be maintainable.

After crossing the aforesaid hurdle, counsel for the appellant has argued that the learned Court below has committed an error in passing the impugned judgment and decree on 14.02.2019 as it is not in consonance with Section 13-B(2) of the Act as the Court had not recorded its satisfaction that the decree under Section 13-B of the Act can be granted.

In this regard Section 13-B of the Act as a whole, is reproduced for a ready reference:-

13B Divorce by mutual consent.

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not

been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.

He has also argued that the respondent has played a fraud with the appellant in obtaining the decree of divorce and has referred to Section 23 of the Act which deals with the "decree in proceedings" and has specifically referred to Section 23(1)(bb).

Section 23 as whole, is reproduced as under:-

23 Decree in proceedings .

(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that-

(a) any of the grounds for granting relief exists and the petitioner ⁴⁷ [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 section 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 section 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.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

[(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions

to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.]

[(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]"

According to counsel for the appellant, as per Section 23, if in any proceedings under the Act, whether the proceedings are defended or not, the Court while granting the decree would make an effort at the first instance to make a reconciliation between the parties. There is no doubt that the intention of the legislature's that in the cases of Hindu Marriage where the parties are at the loggershead due to unfounded emotions and on petty issues they start fighting with each other and reach the court for the purpose of obtaining a decree, the legislature has ordained that before the Court ultimately put a stamp on the dissolution of their marriage, it is obliged to make an effort for their reconciliation.

In the present case, since the decree has been passed under Section 13-B of the Act, the Court had granted six months time, after recording the first motion stage statement on 03.05.2018, so that the parties may rethink about their decision of getting divorce by mutual consent and then on their appearance on the next date of hearing the Court had specifically asked them as to whether they are still ready and willing to part ways with their free consent or not. If it is found that the parties are still adamant to part ways and their decision is voluntary, meaning thereby there is no undue influence and coercion etc., then the Court can grant them the decree of divorce.

Insofar as Section 23(1) (bb) of the Act is concerned, it is provided therein that if a decree of divorce is sought on the grounds of mutual consent then such consent should not have been obtained by force, fraud or undue influence.

Since in this case, we are dealing with the allegations of fraud, therefore, the question would arise as to whether the element of fraud can be determined by the Court in the absence of any evidence?

Learned counsel for the appellant is solely relying upon the photographs which are sought to be produced on record by way of additional evidence to contend that both the parties were living together on 27.10.2018 and 22.12.2018 i.e. even after the petition was filed under Section 13-B of the Act on 03.05.2018. Whereas, they should have lived separately from each other for a period of one year or more before filing of the petition for divorce.

Be that as it may, the fact remains that the said photographs do not inspire any kind of confidence at present in the absence of any corroborative evidence. However, in order to establish fraud that the appellant was taken to the Court under a misconception that since the marriage was solemnized in a temple and has to be registered and that believing her husband she had put her signatures on a petition filed under Section 13-B of the Act, she had suffered the statement before the Court, signed the statement in English and then for six months she did not come to know the intentions of her husband, she suffered another statement thereafter before the Court and ultimately the Court passed the order in the presence of their counsel, who had been engaged in this case and their presence had been marked at the time when their statements

were recorded which were RO & AC (i.e. read over and accepted to be correct), not only signed by the parties but also by the counsels, is a question of fact which can only be determined by filing a suit for declaration in order to challenge the decree which has been allegedly obtained by way of fraud.

We are observing in this manner because the evidence of counsels for both the parties who had appeared before the court below and put their signatures is extremely relevant in this case as because it is not a case where the parties themselves had appeared before the Court and can claim themselves to be unknown to the procedure of law. The argument of learned counsel for the appellant that since the first appeal should be decided by taking into consideration the evidence available on record regarding which he has referred to a decision of the Supreme Court in the case of *Union of India versus K.V. Lakshman & Ors.*, **2016(3) R.C.R. (Civil) 1019** would not apply in these circumstances. Thus, in our considered opinion, the decree which has been allegedly obtained by way of fraud, has to be challenged by the appellant by filing a civil suit and by leading cogent evidence to prove that she had no knowledge of the proceedings which had been initiated at the instance of her husband and even the counsel who had appeared on her behalf was conniving with him. These facts cannot be determined by this court while hearing the appeal as there is nothing before us in the name of evidence.

Having decided this issue first that the remedy of the appellant is to file a civil suit for declaration to challenge the decree allegedly obtained by the respondent by way of fraud, we would now refer to the

second argument in regard to the compliance of Section 13-B(2) of the Act.

In this regard, we had to refer to the averments made in the petition filed under Section 13-B of the Act. It is specifically mentioned in para 6 that "several efforts were made by the well-wishers, relatives, and common friends but the parties could not reunite and it is clear that there is no possibility of their living together as husband and wife. Marital ties are irretrievably broken. Therefore, both the parties have mutually agreed that their marriage should be dissolved by mutual consent." Para 8 of the petition says that "the parties have mutually and amicably settled all matters between them with regard to the maintenance present, past, future and permanent alimony." Para 9 of the petition says "that the consent of the parties has not been obtained by force, fraud or undue influence from any quarter." Para 10 of the petition says "that there is no legal impediment as to why the relief sought should not be granted to the petitioners. That there has not been any unnecessary improper delay in filing the present petition."

The petition under Section 13-B of the Act was signed by both the parties and filed through Ashok Kumar Sharma and Sunita Kaushik, Advocates. It would be relevant to refer to the statement dated 03.05.2018 (first motion stage statement) which are reproduced hereunder:-

"Earlier, petitioner No. 2 got married to one Santosh Singh but unfortunately he died in the year 2017 and we were blessed with a son and a daughter. Petitioner No.2 is residing at the given address in the petition as rented accommodation. Thereafter, petitionerNo.1 and petitioner No.2 got married according to Hindu

rites and ceremonies on 19.01.2017 at Mansa Devi Complex. Out of the said wedlock, no child was born. As our relations did not remain cordial, due to temperamental differences and some misunderstandings, we have been residing separately since 19.04.2017. There is no chance of any reconciliation between us. Parties have agreed to dissolve the marriage by way of mutual consent. Henceforth, petitioner No.2 shall not claim any type of present or future alimony from the petitioner No.1 for herself. Both the parties shall not file any kind of civil or criminal litigation against each other anywhere in the country in respect of any dispute relating to marriage. Henceforth, both the parties shall not interfere in whatsoever manner in the personal life of each other. Both the parties shall not claim any right in the property which shall be acquired by them in any manner including inheritance. Both the parties have compromised the matter out of our free will, without any coercion or pressure. We shall remain bound by our statement.”

Similarly the statement recorded on 14.02.2019 is also reproduced hereunder:-

“We have gone through our previous statement dated 03.05.2018 and in continuation thereof it is stated that we have filed the present petition out of our free will and now nothing is due against each other. Petitioner No.2 shall not claim anything towards past, present and future alimony from the petitioner No.1. No other case arising out of or touching the marriage in question is pending between us. Henceforth, parties shall not interfere in whatsoever manner in the personal life of each other. Parties shall not claim any right in the property of each

other, which would be acquired by them in future in any manner including inheritance. Both the parties have compromised the matter out of our free will, without any coercion or pressure. We shall remain bound by our aforesaid statement made in the court. Decree of divorce may be granted.”

It is pertinent to mention that the Court had granted the cooling off period of nine months instead of six months but it is found that when both the parties had appeared before the Court, they had specifically stated that they have filed the petition for seeking divorce on their free will and now nothing is due against each other. The arguments of learned counsel for the appellant that the Court had not recorded satisfaction with regard to the maintenance and all cannot be looked into for the very fact that the statements have been recorded before the court and on the basis of the said statements the satisfaction of the court is in built in the order which has been passed on 14.02.2019 that it is a fit case in which decree of divorce can be passed.

With these observations, the second contention of learned counsel for the appellant is hereby rejected. Since we have already observed that the only remedy available to the appellant in such circumstances is by way of filing a suit for declaration, we are still granting liberty to the appellant to take recourse to the said remedy, if so advised and the application which has been filed for leading additional evidence is not decided because it would be deciding the issue before it is taken to the court.

The appellant may if so advised, lead the said evidence before the Court below with corroborative evidence to prove that the said photographs are of a period even after filing the divorce petition.

With these observations, the appeal is hereby dismissed with the aforesaid liberty.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

09.05.2019
pooja saini

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>