

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

**FAO-M-423-2014
Decided on : 20.12.2019**

Sonia Sehra @ Sonia Handa

... Appellant(s)

Versus

Harwinder Singh Sehra

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Argued by: Mr. B.R. Mahajan, Sr. Advocate with
Ms. Stuti Goel, Advocate
for the appellant(s).

Mr. Gautam Dutt, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

Instant appeal has been preferred by the wife – Sonia Sehra @ Sonia Handa, against the judgment and consent decree dated 22nd August, 2014, passed by the Ld. Addl. District Judge, Fast Track Court (Adhoc), Jalandhar, (in short 'Ld. Court below'), vide which the joint petition filed by her and the respondent-Harwinder Singh Sehra, under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), was allowed and the marriage between the parties dissolved.

A few facts necessary for adjudication of the case, as pleaded in the petition under Section 13-B of the Act jointly filed by the appellant and respondent may be noticed.

The marriage between the parties was solemnized on 08th April,

2007, according to Hindu rites and ceremonies at New Castle Upon Tyne,

U.K. The parties cohabited at village Kot Kalan, Tehsil and District Jalandhar. One son was born out of the said wedlock on 19th September, 2008. The marriage between the parties turned sour due to their temperamental differences. Thereafter, the parties started living separately from 09th January, 2013. As all efforts to bring about a reconciliation between the parties failed, a petition under Section 13-B of the Act was filed by the parties. Their first motion statement and thereafter their second motion statement were recorded on 01st February, 2014 and 22nd August, 2014, respectively in the following terms leading to the dissolution of marriage by mutual consent:-

First Motion Statements of the parties:-

“Statement of Sonia Sehra @ Sonia Handa, aged about 31 years, d/o Mr. Anal Handa, w/o Harwinder Singh, r/o 84 Kenton road, Newcastle Upon Tyne NE3 4NP, U.K., at present C2B, 50 C, Janakpuri, New Delhi 110058 with Sh. Ravneet Singh Sarna, Adv.

Stated that my marriage with Harwinder Singh was solemnized on 08.04.2007. After marriage we co-habited at GNA House, village Kotkalan, Teh. and Distt. Jalandhar. I have brought my original Adhaar Card copy of which is Ex.CA. After marriage we could not pull together. There was quarrels and discord in the family due to which we could not live happily. The details are given in my petition Ex.C1 which bears my signature and our photograph. I have signed the same after understanding the contents of the same. We are living separately since 09.01.2013 and have not cohabited since then. Now we have decided with our free consent to dissolve our marriage.

As per our mutual understanding, I have received today gold/diamond ornaments worth Rs. 1,12,50,000/- (one crore, twelve lakh and fifty thousand only) i.e. half of the total settled permanent alimony.

As per our mutual understanding child namely Arjun

Sehra will remain in custody of his father with specific visiting/meeting rights of mine which have been detailed in our petition Ex. C1.

Divorce may kindly be granted accordingly.

RO&AC
Sd/- Sonia Sehra
Sd/- R.S. Sarna, Adv.

Sd/-
Dr. B.K. Sharma,
ASJ/JSC/ADJ/FTC
01.02.2014.”

“Statement of Harwinder Singh Sehra s/o Jasvinder Singh Seehra, aged 31 years, r/o GNA House, village Kotkalan, Old Phagwara Road, Teh. and Distt. Jalandhar with Sh. Kanwar Opinder Singh Jaswal (Thakur), Adv.

Stated that my marriage with Sonia Sehra @ Sonia Handa was solemnized on 08.04.2007. After marriage we co-habited at GNA House, village Kotkalan, Teh. and Distt. Jalandhar. I have brought my original Adhaar Card copy of which is Ex.CB. After marriage we could not pull together. There was quarrels and discord in the family due to which we could not live happily. The details are given in my petition Ex.C1 which bears my signature and our photograph. I have signed the same after understanding the contents of the same. We are living separately since 09.01.2013 and have not cohabited since then. Now we have decided with our free consent to dissolve our marriage.

As per our mutual understanding, I have given today gold/diamond ornaments worth Rs. 1,12,50,000/- (one crore, twelve lakh and fifty thousand only) i.e. half of the total settled permanent alimony.

As per our mutual understanding child namely Arjun Seehra will remain in my custody as his father, with specific visiting/meeting rights of his mother namely Sonia Handa which have been detailed in our petition Ex. C1.

Divorce may kindly be granted accordingly.

RO&AC
Sd/- Harwinder Singh Sehra
Sd/- KOS Jaswal, Adv.

Sd/-
Dr. B.K. Sharma,
ASJ/JSC/ADJ/FTC

01.02.2014.”

Second Motion Statements of the parties:-

“Statement of Sonia Sehra @ Sonia Handa wife of Harwinder Singh Sehra, aged about 31 years, d/o Mr. Anal Handa, resident of 84 Kenton road, Newcastle Upon Tyne NE 3 4 NP, U.K., at present C2B, 50 C, Janakpuri, New Delhi.

Stated I was married to Harwinder Singh on 08.04.2007 and thereafter due to incompatibility in temperament we started living separately from each other and are living separately since 09.01.2013 onward earlier also my statement was recorded in this court on 01.02.2014 and even after filing of petition we have never lived or cohabited together as husband and wife. Now there are no chances of reconciliation between us. As per our mutual understanding i have received the remaining amount of Rs. 1,12,50,000/- in shape of demand draft bearing No. 002639, dated 20.08.2014 drawn on HDFC Bank in my name from my husband i.e. petitioner No.2 towards my permanent alimony (past, present and future maintenance). The custody of the minor child Arjun Sehra shall remain with his father i.e. petitioner No.2 with specific visiting/meeting rights of mine which have been detailed in our petition Ex.C1. All our dispute regarding dowry and maintenance have been settled. We have no intention to live together. Our marriage may kindly be dissolved and divorce may kindly be granted by way of mutual consent.

RO&AC

Sd/- Sonia Sehra

Sd/-

(Balwant Singh),
ADJ/FTC/22.08.2014.”

“Statement of Harwinder Singh Sehra, aged about 31 years, s/o Jasvinder Singh Seehra, resident of GNA House, VPO Village Kot Kaan, Old Phagwara Road, Tehsil and District Jalandhar.

Stated that I was married to Sonia Sehra @ Sonia Handa on 08.04.2007 and thereafter due to incompatibility in temperament we started living separately from each other and are living separately since 09.01.2013 onward earlier also my

statement was recorded in this court on 01.02.2014 and even after filing of petition we have never lived or cohabited together as husband and wife. Now there are no chances of reconciliation between us. As per our mutual understanding i have paid the remaining amount of Rs. 1,12,50,000/- in shape of demand draft bearing No. 002639, dated 20.08.2014 drawn on HDFC Bank in the name of petitioner No.1 towards her permanent alimony (past, present and future maintenance). The custody of the minor child Arjun Sehra shall remain with me with specific visiting/meeting rights to petitioner No.1 which have been detailed in our petition Ex.C1. All our dispute regarding dowry and maintenance have been settled. We have no intention to live together. Our marriage may kindly be dissolved and divorce may kindly be granted by way of mutual consent.

RO&AC

Sd/- Harwinder Singh Sehra

Sd/- KPS Jaswal, Adv.

Sd/-

(Balwant Singh),

ADJ/FTC/22.08.2014.”

Adverting to the appeal in hand, it has been directed against the consent decree under Section 13-B of the Act by contending that the same had been obtained by the respondent-husband by playing fraud upon her and by misrepresentation, undue influence and coercion. It has been alleged that the mandatory conditions as stipulated under Section 13-B and Section 23(1)(bb) of the Act were given a go by. The appellant is a citizen of U.K. by birth and a permanent resident of New Castle, U.K., whereas, the respondent belongs to a renowned business family of Jalandhar. On the very first day of the marriage of the parties, when she reached Punjab, she discovered her husband indulged in a lot of vices. He would physically and mentally harass her but she bore the hostilities for the sake of their child. The husband would not hesitate to declare that he would marry someone else as he was no longer interested in her. She alleged that the husband

clicked obscene photographs of her on his mobile phone in connivance with her brother-in-law and father-in-law, which he circulated on the appellant's phone via whatsapp. She further alleged that the husband and his family started pressurizing her for a divorce, else they would circulate her photographs on the internet. They called her parents from U.K. to India on false pretext and showed her obscene photographs to them and it was in this background, she was compelled to sign on the compromise-deed and the divorce petition at gunpoint in the presence of 20 other men, which included Advocates and gunmen. She was thereafter compelled to move into a rented accommodation, where, she was kept under their vigil till her 2nd motion hearing on 22nd August, 2014. She alleged that her statement at the first motion on 01st February, 2014 had been given by her only because there was a threat exerted by the husband and his family to her mother's life, who too was allegedly in their custody. It was only in March, 2014, the respondent returned all her personal documents after, he was confident that the Court would grant them divorce. Thereafter, she along with her mother left for U.K. on 31.03.2014 and remained there for four months. She claimed she remained under depression during this period and refrained from retracting from her first motion statement due to the threats extended to her. She claimed that between the first and second motion statements, she was unable to take any action as she was under extreme duress and had also been deprived of her personal documents. She was told that the husband and his family would give her ₹2,25,00,000/- and would return all her gold ornaments and thereafter she could leave for good. She was told that their child would remain in the custody of the husband, however, she would be allowed to visit him on every Friday, Saturday and Sunday. Appellant submitted that till date despite the marriage having been dissolved the gold

ornaments as well as the compromise-deed had not been supplied to her. She also alleged that the decree of divorce had been obtained on misrepresentation of facts before the Court by falsely stating that the marriage had been solemnized in Jalandhar, whereas, it had actually been performed in the U.K. It had also been misrepresented that the parties had been living separately since 09th January, 2013, for which a false affidavit had been furnished to show their separation for one year as mandated under Section 13-B of the Act. She lastly submitted that since the statutory requirement of living separately for one year preceding the date of presentation of their petition was not fulfilled, therefore, the consent decree under Section 13-B of the Act could not have been granted. Ld. Senior Counsel for the appellant while making his submissions drew attention of this Court to an application (C.M. No. 5503-CII-2015) filed under Section 151 of CPC for placing on record certain photographs along with certain other documents. The Ld. Senior Counsel urged that from a perusal of these photographs and documents etc., it was evident that the parties had not separated for one year preceding the filing of the petition under Section 13-B of the Act, as is mandatorily required before the filing of any such petition.

Learned counsel for the respondent on the other hand has opposed the instant appeal on the ground of maintainability by urging that as per Section 19(2) of the Family Court Act, 1984, no appeal can lie against a consent decree. It has been further urged that the allegations of the wife having been coerced into agreeing to the consent decree on the face of it is nothing but a bundle of lies and facetious. Learned counsel also submitted that the relations between the parties had in fact deteriorated to such an extent leaving them with no other option but to move a petition

under Section 13-B of the Act. Not only this, the agreed amount of ₹2,25,00,000/-, was paid as per the terms & conditions of the compromise-deed arrived at between the parties along with all her gold ornaments, which was also accepted by the appellant.

We have heard learned counsel for the parties and have also gone through the evidence and other material on record.

The question which would require our consideration is qua the maintainability of the instant appeal. It would, therefore, be apposite to reproduce Section 13-B of the Hindu Marriage Act, 1955, as well as Section 19 of the Family Court Act, 1984, which are as follows:

- “I. **13-B. 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 solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 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 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 mean time, the Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been*

solemnized 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.

II. Section 19 of the Family Courts Act, 1984: - (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973 or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(5) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.”

A plain reading of Section 13-B of the Act makes it abundantly clear that the parties seeking divorce by mutual consent must have been living separately for a period of at least one year preceding the filing of the petition Section 13-B of the Act. Further, the interregnum period of six months between the recording of the first motion statement and the second motion statement is primarily to give an opportunity to the parties to reflect on their move and in case the parties are still not willing to live together,

then to make their second motion statement leading to the dissolution of marriage between them. It goes without saying if during the interregnum period one of the parties withdraws his/her consent, then no consent decree under Section 13-B of the Act can be passed.

Coming next to Section 19(2) of the Family Courts Act, a bare reading of the provisions also makes it amply clear that no appeal can lie against a consent decree as has also been held by this Court in **FAO No. 5761 of 2018**, titled as, “**Gaurav Arya Vs. Anandita Jain**”, decided on **01.11.2019**. No doubt, if a consent decree is obtained due to coercion, fraud etc., the Court can set it aside.

A perusal of both the first motion and second motion statements recorded before the Court below and reproduced above reveals that the parties had separated from each other and had been living apart since 09th January, 2013 and it was on 02nd February, 2014, i.e. after more than a year, both the parties approached the Ld. Court below with a prayer for dissolution of their marriage under Section 13-B of the Act. Hence, in this background, the contention of the learned counsel for the appellant that the mandatory period of one year as stipulated under Section 13-B of the Act was not complied with and the consent decree had been obtained on misrepresentation of facts and under coercion is devoid of merit. It is undisputed that the marriage between the parties was dissolved under Section 13-B of the Act, only after following the due procedure, as prescribed under Section 13-B of the Act. It was done only after the Court had recorded its satisfaction, after making an inquiry into the correctness of the terms and conditions of the compromise deed arrived at between the parties and more importantly it was done in the presence of the parties including the appellant-wife. It would also be relevant to point out that

throughout the proceedings before the Court below, the appellant wife was represented by a counsel. At no point of time, did she ever report or bring it to the notice of the Court below that she was under any coercion to make the said statements. Further, it is very strange that on the one hand, it has been alleged by the appellant that she was confined in illegal custody by the respondent and his family and forced to get both of her statements recorded, but as per her own pleaded case, in March, 2014 i.e. after the recording of her first statement on 01st February, 2014, she along with her mother went to U.K. Hence, once she was in U.K., there was no question of her being under any threat, much less, any duress to return to India to get her second motion statement recorded on 22nd August, 2014. In fact, even assuming for the sake of arguments that she had in fact been pressurized into making her first motion statement in February, 2014, it does not appeal to reason nor can it be digested that once she had crossed the shores of India, there was any compelling reason or any pressure on her to return in August, 2014 for getting her second motion statement recorded, as she had ample opportunity to take recourse to the remedies available under law and to bring it to the notice of the Court concerned about the circumstances under which she had been compelled to get her statement recorded. It goes without saying that her non-appearance for the recording of her second motion statement in August, 2014, would have rendered the petition under Section 13-B of the Act, infructuous.

Further, the plea of the learned counsel for the appellant that there was no separation of one year prior to filing of petition as mandated under Section 13-B of the Act, can be deduced from the facebook messages, photographs and other documents presented before this Court by the appellant in an application filed under Section 151 of CPC, must fail for the

reason that it is not understandable as to how from a look at the facebook messages and photographs, the date and place on which they were clicked can be ascertained. Still further, for this Court to appreciate and to look at the documents, photographs as well as facebook messages, annexed with the application, a formal application under Order 41 Rule 27 of CPC should have been filed, so that an opportunity to rebut the veracity of the photographs etc. could have been provided to the respondent-husband. Since it has not been done, this Court cannot take into account the said photographs etc.

As a sequel to the above, we find that no interference is warranted in the judgment passed by the Ld. Court below. Consequently, the present appeal stands dismissed and the judgment and decree dated 22nd August, 2014, of the Ld. Court below, is upheld.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

December 20, 2019

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*