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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **MAT.APP.(F.C.) 267/2019 & CM APPL. 45486/2019**

SARIKA

..... Appellant

Through Mr. D.P.S. Dagar, Mr. R.P. Nafria,
Advocates.

versus

SUSHIL KUMAR

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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16.10.2019

1. The appellant is aggrieved by a consent judgment and decree dated 03.06.2019, passed by the learned Principal Judge, Family Court, Karkardooma Courts, Delhi whereunder, a joint petition for divorce by mutual consent has been allowed. We may note that by virtue of order dated 26.03.2019, passed on the First motion petition and order dated 03.06.2019 passed on the Second motion petition filed jointly by the parties, the marriage of the appellant with the respondent stands dissolved under Section 13B(2) of the Hindu Marriage Act, 1955.

2. After a period of almost five months reckoned from 03.06.2019, the appellant has woken up to the fact that a fraud has been played on her by the respondent in order to get divorce, that she has been misled by the respondent and she was not aware of the consequences of moving joint petitions for divorce by mutual consent.

3. We have requested learned counsel for the appellant to address us on the maintainability of the present appeal, particularly in the light of the bar placed under Section 19(2) of the Family Court Act, 1984 that stipulates that no appeal shall lie from a decree or an order passed by the Family Court with the consent of the parties.

4. Learned counsel for the appellant states that since fraud vitiates all acts, a decree of divorce having been obtained by the respondent by fraud, the said decree ought to be declared as null and void. In support of the said submissions, learned counsel relies on a decision of the Division Bench of the Uttarakhand High Court in Beer Singh Rana Vs. Smt. Beena Rana reported as AIR 2011 UTTARAKHAND 64, to contend that the present appeal as filed, is maintainable and the bar placed under Section 19(2) of the Act, will not be an impediment.

5. We are not inclined to accept the submission made by learned counsel for the appellant. The facts and circumstances in the case of Beer Singh Rana Vs. Smt. Beena Rana (supra) are clearly distinguishable inasmuch as after a decree of divorce by mutual consent was passed in the captioned case, the appellant therein had moved an application under Order 23 Rule 3 CPC before the Trial Court claiming that undue influence was exercised on him and he had no knowledge of the compromise, which application was rejected by the Trial Court and aggrieved by the rejection order, the appellant had approached the High Court. In the instant case, the appellant has not taken any such steps to approach the Family Court. Instead, he has approached this Court directly against the decree of divorce granted by mutual consent.

6. At this stage, learned counsel for the appellant states that he may be permitted to withdraw the present appeal while reserving the right of his client to seek recourse in law against the respondent, as may be available.

7. While refraining from making any observations on the maintainability or merits of any such proceedings that the appellant purposes to initiate, the present appeal is dismissed as withdrawn alongwith the pending application.

HIMA KOHLI, J

ASHA MENON, J

OCTOBER 16, 2019/MK