

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 48 of 2021**

- Priyanka Gupta [wrongly mentioned as Priyanka Kumar (Gupta) in the impugned judgment] wife of Raju Kumar, D/o Binod Prasad Gupta, aged about 26 years (wrongly mentioned as 23 years in the impugned judgment), Present resident of Dipua, Garhwa, Police Station and District Garhwa (Jharkhand).

---- Appellant**Versus**

- Raju Kumar, son of Shri Mukhlal Prasad, aged about 34 years, resident of A-32, Shivam City, Lingiyadih, Bilaspur, District Bilaspur (C.G.)

Permanent resident of village Dandai, Police Station
Dandai, District Garhwa (Jharkhand)

---- Respondent

For Appellant : Mr. V.K. Pandey, Advocate.
For Respondent : Mr. Amrito Das, Advocate.

Hon'ble Shri Justice P. Sam Koshy &
Hon'ble Smt Justice Rajani Dubey

Order on Board by P. Sam Koshy, J

27/10/2021

Heard.

01. The present appeal under Section 19(1) of the Family Courts Act, 1984 has been preferred against the judgment dated 25.03.2021 passed by the Principal Judge, Family court, Bilaspur (C.G.), in Civil Suit No.93-A/2021.

02. Vide the judgment impugned, the Court below has allowed an application filed under Section 13(B) of the Hindu

Marriage Act, 1955 (hereinafter referred to as 'the Act') granting decree of divorce to the appellant and respondent on the ground of mutual consent.

03. Brief facts of the case are that marriage of appellant and respondent was solemnized on 17.02.2016 according to Hindu rites, ritual and customs. However, after some time, relation between them started getting worse. It is said that both the appellant and respondent have been staying separately since 10.01.2018.

04. Finally, an application under Section 13(B) of the Act was filed on 28.01.2021 seeking decree of divorce by mutual consent. The Court below, after registering the matter, directed for counseling of the parties, which after counseling is said to have failed. Thereafter, the matter was directed to be taken up after six months in terms of requirement of law. However, the appellant and respondent themselves are said to have jointly made a request before the Court below for taking up the matter before six months waiving cooling period. Initially, the Court below vide order dated 08.02.2021 had dismissed the application praying for waiving of cooling period of six months.

05. Against the said order, the appellant and the respondent had jointly filed a Writ Petition (227) No.165/2021 before the High Court. The said writ petition finally stood allowed vide order dated 15.03.2021 and the High Court while disposing of the writ petition directed the concerned Court below to take

up the matter before the cooling period of six months further directing the parties to appear before the Family Court on 25th March, 2021 to participate in further proceeding. In terms of the order passed by this Court, the matter was taken up by the Family Court on 25th March, 2021. That on the said date, the Court below recorded the statements of both the parties i.e. the appellant and respondent and have also taken the requisite documents to establish and ascertain the identity of the parties like Adhar Card etc. and thereafter, the impugned order was passed on 25.03.2021 itself.

06. It is subsequent to the decree of divorce that was passed by the Court below, the present appeal has now been filed by the appellant.

07. The grounds raised by the appellant is that the Court below has not followed the mandatory requirement under law so far as exploring the possibility of an amicable settlement between the parties. Secondly, considering the aspect of grant of permanent alimony to the appellant herein, and thirdly, in respect of the entire proceeding before the Court below having been conducted by playing fraud in as much as it is alleged that the respondent is said to have taken signatures of the appellant on blank paper and the same have been used for the purpose of litigating before the High Court as also before the Court below and thus prays for recalling of the order.

08. We, in the course of appreciating the facts of the case,

were taken to the documents jointly filed by the parties before the Court below and we have also gone through the statement of both the parties and find that there was absolutely no dispute or an allegation of any fraud being played by the respondent with the appellant in course of adjudication of the matter before the Court below. This Court also could not find any procedural irregularity committed by the Court below in the process of finalising the proceeding and passing of the impugned judgment and decree dated 25.03.2021. The order of the Court below as also the order dated 15.03.2021 passed by this High Court in WP(227) No.165/2021 would clearly reflect that initially there was a joint request made by both the parties for an appropriate order under Section 13 (B) of the Act. Acting on the same, the Court below has ordered for a counseling between the parties, which resulted in failure. Thereafter, the Court below has ordered for keeping process after six months expecting the reconciliation between the parties which too have failed in as much as before the conclusion of the six months cooling period. The parties had made a joint request to the Family Court for waiving of six months cooling period and for passing of an order of the decree of divorce. Here also the Court below, at first instance, has rejected their application so far as grant of waiver of six months cooling period vide order dated 08.02.2021. Aggrieved by the same, there was a joint writ petition filed by the appellant as well as by respondent under Article 227 of the Constitution of India and an order was obtained with a

direction to the Family Court to take up the matter before conclusion of six months cooling period and specific date was given by the High Court for their joint appearance before the Court below for further proceeding. Strictly in accordance with the order of the High Court in the aforementioned writ petition, both the parties again appeared before the Court below on 25.03.2021, and on which date, statements of both the parties got recorded before the Court below. Even at that point of time, the appellant herein did not oppose in any manner to the joint request made on their part for decree of divorce at the earliest. Even when their statements were being recorded, there was no allegation of any fraud being played by the respondent herein or the appellant herein having been cheated on the part of respondent by way of using certain documents over which signatures of the petitioner were obtained by fraud. All these contentions of the petitioner, for the first time, is being taken in the present appeal. Therefore, we are of the considered opinion that it is not a case where the appellant herein was taken by surprise in the course of passing impugned judgment and decree of divorce by the Court below. The appellant herein has with wide open eyes and also fully aware of the consequences coupled with the fact that she was represented by a lawyer all along, had fully participated in the proceeding and in the proceeding itself she has specifically mentioned that both in the applications moved before the Family Court at first instance as also when the statements were being recorded in

person that there was no dispute so far as alimony is concerned, there is no dispute so far as the claim for maintenance is concerned and that she is voluntarily relinquishes all further claims also from the respondent.

09. Keeping all these facts if the Court below has passed an order particularly in wake of the order passed by the writ Court in WP(227) No.165/2021, the order under no circumstances can be held either perverse or contrary to the pleading or contrary to the evidence which has come on record. We do not find any strong case made out by the appellant calling for an interference with the impugned judgment passed by the Court below.

10. In view of the same, the appeal fails and is, accordingly, dismissed at the admission stage itself.

11. Let appellate decree be drawn accordingly.

12. Certified copies of the proceeding submitted by the parties be taken on record.

Sd/-

(P. Sam Koshy)
Judge

Sd/-

(Rajani Dubey)
Judge