

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**FAO-348-2021
(Heard through VC)
Date of decision:02.08.2021**

Jagjit Singh

....Appellant No.1

AND

Sandeep Kaur

....Appellant No.2

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Vijay Rana, Advocate for
appellant Nos. 1 and 2.

Ritu Bahri, J.

The present appeal has been filed for setting aside order dated 28.01.2021 vide which an application for setting aside judgment and decree dated 31.05.2016 passed by the learned Additional District Judge, Jalandhar, has been dismissed.

The appellants solemnized marriage on 13.12.2006 as per Sikh Religious Rites at Kapurthala. Out of this wedlock, two children namely Ms. Karmandeep Kaur and Master Gurfateh Singh were born on 09.09.2010 and 23.08.2013 respectively. On account of temperamental differences, they started living separately since 20.01.2014 and both the children were living with the mother-appellant No.2. A petition under Section 13-B of Hindu Marriage Act (hereinafter referred to as 'the Act') for dissolution of marriage by way of mutual consent was filed before the court of Learned Additional District Judge, Jalandhar, District Jalandhar on 26.11.2015 and the same was allowed vide judgment and decree dated 31.05.2016 and since then the appellants were living separately.

The appellants have placed on record compromise dated

21.03.2018 (Annexure A-1) reduced into writing between the appellants. As per this compromise, with the intervention of relatives, respectables and common friends, parties have started living together as husband and wife alongwith their minor children at the house of appellant No. 1 i.e. matrimonial house at House No. 2, Kabir Avenue, Ladhewali, Jalandhar, Tehsil and District Jalandhar w.e.f. 18.03.2018. The appellants had filed **FAO-M-205-2018** titled as **Sandeep Kaur v/s. Jagjit Singh** before this Court for setting aside decree of divorce granted under Section 13-B of the Act vide judgment and decree dated 31.05.2016. Vide order dated 06.07.2018 (Annexure A-2), this appeal was dismissed by observing that remedy of filing appeal/application under Section 28 of the Hindu Marriage Act as well as Section 96(3) of the Civil Procedure Code would lie before the same Court or the successor Court of Additional District Judge, Jalandhar for setting aside consent decree dated 31.05.2016. Pursuant to order dated 06.07.2018 (Annexure A-2), the appellants filed an application (Annexure A-3) before the Family Court, Jalandhar for setting aside judgment and decree dated 31.05.2016 on the basis of compromise dated 21.03.2018. This application has now been dismissed by referring to the judgment passed by this Court in **Jyoti V/s. Neeraj Kumar Saini** 2019 (1) R.C.R. (Civil) 748 wherein it was held that the appeal against the judgment and decree was not maintainable before the Family Court and it is the High Court who could set aside the consent decree passed under Section 13-B of the Hindu Marriage Act.

A perusal of the impugned order dated 28.01.2021 (Annexure A-3) shows that the Family Court had recorded the statement of the parties and had appreciated that the parties reconciled their differences and started

living together by way of compromise after getting mutual divorce under Section 13-B of the Act. Statement dated 20.11.2018 of appellant-Jagjit Singh (Annexure A-4) as well as statement dated 20.11.2018 of appellant-Sandeep Kaur (Annexure A-6) have been placed on record. A perusal of the statements shows that both the appellants are living together without any threat or coercion. Further, this appeal has been filed by appellant No.1-Jagjit Singh (through his power of attorney Kulwinder Kaur-mother) and appellant No.2-Sandeep Kaur alongwith their affidavits.

This Court in the case of *Jyoti V/s. Neeraj Kumar Saini* 2019

(1) R.C.R. (Civil) 748 has observed in para 5 as under:-

“5. In this regard, learned counsel for the appellants has referred to a judgment of the division bench of this Court rendered in the case of *Krishna Khetarpal, Headmistress, Government Girls High School, Bhuna, Tehsil Fatehabad, District Hisar v. Satish Lal; 1986 (2) PLR 608* in which the same issue had arisen and it has been decided that the appeal against the consent decree passed under Section 13B is appealable under Section 28 of the Act and Sub Section 3 of Section 96 of the CPC has no bar. Since, this issue is no more res integra as already been decided by this Court, therefore, we have entertained the appeal.”

While referring to the judgment in *Krishna Khetarpal's case (supra)*, the Division Bench had examined this issue in detail and held that under Section 28 of the Act, an appeal was maintainable against the consent decree and divorce under Section 13-B of the Act by either party as a matter of right. In para 5 of the said judgment, the Division Bench has observed as under:-

“An appeal against the decree of divorce by mutual consent distinctly is not merely on consent of the parties, for

the matrimonial Court is involved in decision making so that it accords not only with provisions of Section 13B of the Act but also Section 23 of the Act. In sub-section 13B of the Act, a joint petition by the spouses can be presented to the District Court on the ground that they have been living separately for a period of one year or more before the presentation of the petition and that they have not been able to live together and further that they have mutually agreed that the marriage should be dissolved. The petition then lies in hibernation for six months and under sub-section (2) both the parties have to activate it on the motion to the Court. It is then that the Court enters upon an enquiry into the facts where the marriage has been solemnized and whether the averments in the petition are true and further there are no impediments in the way as conceived of in Section 23 and in particular of sub-section (1)(bb) that such consent has not been obtained by force, fraud or undue influence. Thus a decree for divorce by mutual consent is not based merely on mutuality of the consenting parties but the court's involvement in decision making is inextricably a part of the decree. And since the possibility of an error, legal or factual, entering in the decision making cannot be ruled out, an appeal under Section 28 of the Act has advisedly been provided. Besides, Section 12 of the said Act says that subject to other provisions contained in the said Act and to such rules and the High Court may make in this behalf as proceedings under the said Act shall be regulated, as far as may be, by the Civil Procedure Code, 1908. Thus the proceedings in the appeal are to be regulated as far as may be, by the Civil Procedure Code without altering the substantive right of appeal to the parties concerned. On the above analysis and differentiation, the conclusion is inescapable that an appeal against a consent decree under Section 13B of the Act is appealable under Section 28 of the Act and sub-section (3) of the Section 96 of the Civil Procedure Code is no bar. Similarly any other consent decree passed under the said Act is also

appealable.”

Keeping in view above, the appeal against the decree of divorce under Section 13-B of the Act is maintainable. The parties are staying together after the decree of divorce since 2018. Further, the compromise dated 21.03.2018 (Annexure A-1) effected between the parties has also been placed on record coupled with the statements made by the appellant No.1- Jagjit Singh (Annexure A-4) dated 20.11.2018 and by the appellant No.2- Sandeep Kaur (Annexure A-6) dated 20.11.2018 before the Family Court, Jalandhar before passing impugned order dated 28.01.2021.

Keeping in view the peculiar facts and circumstances of the case and since the appellants are living together alongwith the children, this Court is of the view that it is never too late to mend ways and, therefore, the instant appeal is allowed and judgment and decree dated 31.05.2016 passed by the learned Additional District Judge, Jalandhar by which marriage of the parties was dissolved, is set aside.

(RITU BAHRI)
JUDGE

02.08.2021

Divyanshi

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No