

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

FAO-M-23-2021

Date of decision: 09.09.2021

Rajwinder Kaur

...Appellant No.1

AND

Palwinder Singh

...Appellant No.2

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

Present: Mr. Vikasdeep Singh, Advocate,
for the appellants.

Ritu Bahri, J. (oral)

The present appeal has been filed against the judgment and decree dated 07.01.2020 passed by the Additional Civil Judge (Sr. Division), Sultanpur Lodhi (Exercising the powers conferred by the District & Sessions Judge, Kapurthala), whereby petition filed by the appellants under Section 13-B of the Hindu Marriage Act, 1955 for dissolution of marriage by decree of divorce by mutual consent between the parties, has been allowed.

The appellants (Rajwinder Kaur and Palwinder Singh) solemnized marriage on 16.02.2015 as per Sikh rites at village Saroopwal, Tehsil Sultanpur Lodhi, District Kapurthala. Out of this wedlock, one child namely Gurkirat Singh was born on 30.12.2015. On account of temperamental differences, they started living separately since 11.11.2017. Ultimately, a petition under Section 13-B of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for dissolution of marriage by way of

mutual consent was filed before the court of Additional Civil Judge (Senior Division), Sultanpur Lodhi on 29.05.2019 and the same was allowed vide judgment and decree dated 07.01.2020.

However, after getting decree of divorce with mutual consent under Section 13-B of the Act, the appellants have now reconciled their differences and started living together as husband and wife alongwith their minor child. The present appeal challenging the decree of divorce dated 07.01.2020 has been filed by appellant No.1-Rajwinder Kaur and appellant No.2-Palwinder Singh jointly, which is supported by their respective affidavits.

Today, Palwinder Singh-appellant No.2 is present in the chamber of counsel for the appellants and appears virtually before this Court. He states that he and Rajwinder Kaur-appellant No.1 are staying together happily, therefore, the decree of divorce dated 07.01.2020 granted under Section 13-B of the Act be set aside. Rajwinder Kaur-appellant No.1 also appears before the Court virtually and states that after passing of the decree of divorce dated 07.01.2020, both of them are staying happily for the last two months i.e. since July, 2021. Photocopies of the Aadhaar cards of Rajwinder Kaur and Palwinder Singh (appellants) are taken on record as Annexures A-1 and A-2 respectively.

A Division Bench of this Court in **Jyoti V/s. Neeraj Kumar Saini**, 2019 (1) R.C.R. (Civil) 748 has observed 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 passed 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 against the consent decree of divorce under Section 13-B of the Act by either party, was maintainable, 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 13-B of the Act but also Section 23 of the Act. In sub-section 13-B 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 138 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.”

In view of the above judgment, this Court is of the view that appeal against the decree of divorce under Section 13-B of the Act is maintainable. In the facts of the present case, after passing of the decree of divorce, both the parties are staying together happily since July, 2021.

Keeping in view the peculiar facts and circumstances of the case, since the appellants are living together alongwith their minor child, this Court is of the view that it is never too late to mend ways. Resultantly, the instant appeal is allowed and the impugned judgment & decree dated 07.01.2020 passed by the Additional Civil Judge (Senior Division), Sultanpur Lodhi, vide which marriage of the parties was dissolved, are set aside.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

09.09.2021
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No