

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

FAO-M-46-2020 (O&M)
Date of Decision:-20.4.2021

Baljinder Kaur

... Appellant

Versus

Sukhdeep Singh

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Maninder Singh Bajwa, Advocate
for the appellant.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

CM-9341-CII-2020

Heard.

This application for condonation of delay of 135 days in filing
of the appeal is hereby allowed for the reasons mentioned in the application.

FAO-M-46-2020

Appellant-Baljinder Kaur has filed this appeal against the
judgment and decree dated 5.8.2019 passed by the Court of Additional Civil
Judge (Senior Division), Patti (District Tarn Taran), while exercising the
powers of District Judge, in HMA-41/17.5.2019, whereby the joint petition
titled as 'Sukhdeep Singh and Baljinder Kaur' filed under Section 13-B of

Hindu Marriage Act (in short 'HMA') was allowed on the basis of the mutual consent of both the parties.

The appellant has challenged the aforesaid judgment and decree on the ground that the same are result of fraud. Her husband took her consent for mutual divorce, on the pretext that he was to go abroad and settle there. However even after getting the decree of divorce under Section 13-B HMA, he is living in India and has not made any efforts to go abroad. She has also come to know that her husband Sukhdeep Singh took her consent for mutual divorce, just to get rid of her and thus played fraud.

We have heard the counsel for the appellant.

During arguments the counsel for the appellant reiterated the aforesaid allegations of fraud committed by Sukhdeep Singh against the appellant. The counsel for the appellant prayed that in the light of the aforesaid fraud, the impugned judgment and decree are liable to be set aside.

We have considered the submissions made by counsel for the appellant. However, we are of the view that the present appeal is not maintainable.

A Division Bench of this Court in FAO-M-82-2018 Ritika Goel vs. Ajay Goel decided on 6th December, 2019 has specifically held that in the light of the provisions of Section 19(2) of the Family Courts Act 1984, no appeal would lie against the consent decree of divorce under HMA.

Even Section 96(3) of the Code of Civil Procedure (in short 'CPC') provides that no appeal shall lie from a decree passed by the Court

with the consent of the parties. The Hon'ble Supreme Court in Pushpa Devi Bhagat (D) Th. LR vs. Rajinder Singh & Ors. (2006) 5 SCC 566 observed that no appeal is maintainable against a consent decree having regard to specific bar contained in Section 96(3) CPC. The Hon'ble Apex Court further held that the only remedy available to the aggrieved party to a consent decree, to avoid the same, is to approach the Court which passed the consent decree.

In the present case the impugned decree was passed by the competent Court of jurisdiction, in accordance with the provisions of Section 13-B HMA on the basis of the mutual consent given by the parties. Now appellant has taken plea that her consent for divorce was taken by Sukhdeep Singh, her husband by playing fraud. In these circumstances, we are of the view that the appellant can avail appropriate remedy, if any, available to him.

Consequently, this appeal is hereby dismissed being not maintainable. However, appellant is at liberty to seek appropriate remedy in accordance with law.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

20.4.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No