

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1396-2020 (O&M)

Date of decision:29.03.2022

Madhu Bala

....Appellant No.1

AND

Sandeep Rathee

....Appellant No.2

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Ajay Shekhawat, Advocate for
appellant Nos. 1 and 2.

Ritu Bahri, J.

The marriage between the parties was solemnized on 11.02.2005 as per Hindu rites and rituals at Rohtak. Out of this marriage, two children namely Aryan Rathee and Archana were born. They were residing separately since 09.03.2017 and a decree of divorce under Section 13-B of the Hindu Marriage Act was granted on 16.11.2019.

Today, appellant No.1-Madhu Bala and appellant No.2-Sandeep Rathee are present in Court and have handed over copies of their Aadhar Cards, which are taken on record. On a specific query put to them, they are happily staying together alongwith the children and seek to set aside judgment and decree dated 16.11.2019.

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 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.”

Keeping in view above, the appeal against the decree of divorce under Section 13-B of the Act is maintainable.

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 16.11.2019 passed by the learned Additional Principal Judge, Rohtak by which marriage of the parties was dissolved, is set aside.

Pending applications are disposed of.

(RITU BAHRI)
JUDGE

29.03.2022
Divyanshi

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No