

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

FAO-M-23-2022 (O&M)
Date of decision: 21.10.2022

Harwinder Kaur

...Appellant

Vs

Hardeep Singh

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. Manoj K. Sharma, Advocate,
for the appellant.

Mr. Rahul Sharma, Advocate,
for the respondent.

Ritu Bahri, J. (oral)

CM-14220-CII-2022

For the reasons mentioned in the application, same is allowed
and delay of 3728 days in filing of the appeal is condoned.

FAO-M-23-2022

The present appeal has been filed against the judgment and
decree dated 13.05.2010 passed by the District Judge, Mansa, whereby a
joint petition filed by the appellant and respondent under Section 13-B of
the Hindu Marriage Act, 1955 seeking decree of divorce by mutual consent
between the parties, has been allowed.

Marriage of the appellant-Harwinder Kaur and respondent-
Hardeep Singh was solemnized on 27.04.1997 as per Sikh rites at village
Tamkot, Tehsil and District Mansa. Out of this wedlock, one daughter
namely, Ramanjeet Kaur was born. On account of temperamental
differences, they could not pull on together. Finally, they (appellant and
respondent) started living separately. 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 District Judge, Mansa, on 11.11.2009 and the same was allowed vide impugned judgment and decree dated 13.05.2010.

However, after getting decree of divorce with mutual consent under Section 13-B of the Act, a better sense has prevailed and both the parties have now reconciled their differences keeping in view the welfare of their minor daughter. Appellant and respondent have again solemnized marriage on 20.12.2014 and started living together as husband and wife alongwith their minor daughter. The present appeal challenging the decree of divorce dated 13.05.2010 has been filed by appellant-Harwinder Kaur, which is supported by her affidavit.

Affidavits dated 12.10.2022 of appellant-Harwinder Kaur and respondent-Hardeep Singh have been filed in Court today by their respective counsel. In her affidavit, appellant-Harwinder Singh has stated that after passing of the decree of divorce dated 13.05.2010, a better sense has prevailed between her and Hardeep Singh keeping in view the welfare of their minor child. Now, they have again performed their marriage on 20.12.2014 and are residing together as husband and wife, along with the minor daughter. She has no objection, if the decree of divorce dated 13.05.2010 is set aside. To the same effect is the affidavit of respondent-Hardeep Singh. Photocopies of Aadhaar cards of both the parties 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 for the last more than 08 years.

Keeping in view the peculiar facts and circumstances of the case, since the appellant and respondent are living together alongwith their minor daughter, 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 13.05.2010 passed by the District Judge, Mansa, vide which marriage of the parties was dissolved, are set aside.

(RITU BAHRI)
JUDGE

(NIDHI GUPTA)
JUDGE

21.10.2022
ajp

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