

2024:PHHC:023378-DB

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-733-2024 (O&M)
Date of Decision: 20.02.2024

Ramandeep Kaur

..... Appellant

Versus

Kapil Dev

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Saurav Bhatia, Advocate
for the appellant.

SUDHIR SINGH J. (ORAL)

1. The instant appeal has been preferred by the petitioner-wife (Ramandeep Kaur) against judgment and decree dated 09.01.2024 passed by the learned Principal Judge, Family Court, S.B.S. Nagar, whereby the petition jointly filed by her and respondent-husband (Kapil Dev) under Section 13-B of the Hindu Marriage Act, 1955 (for short ‘the 1955 Act’) was allowed.
2. A perusal of the appeal would reveal that the appellant is seeking setting aside of the decree of divorce by way of mutual consent passed by the Family Court, S.B.S. Nagar under Section 13-B of the Hindu Marriage Act, *inter alia*, on the plea that the consent of the appellant was

taken by fraud, deception, misrepresentation and by nefarious methods and is no free consent. In paragraph No.20 of the memorandum of appeal, the appellant has made the following averment:-

“20. That it is a matter of concern, the mutual divorce was procured by the respondent by fraud and misrepresenting his plans and actions. It is further stated that the respondent further mislead the appellant to waive off the mandatory cooling-off period of 6 months.”

3. Considering the stand taken by the appellant, it would be apposite to refer to Section 19(2) of the Family Courts Act, 1984 (for short ‘the 1984 Act’), which reads as under:-

“(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991.”

From a perusal of above extracted provision, it is evident that Sub-section 2 of Section [19](#) of the 1984 Act specifically bars the entertaining of any appeal against a consent decree.

4. In ***Pushpa Devi Bhagat (D) Th. LR. Sadhna Rai v. Rajinder Singh, 2006(3) RCR (Civil) 479***; the Hon'ble Supreme Court, while considering an issue as to whether the appeal filed under Section [96](#) of the Civil Procedure Code, against the consent decree was maintainable; observed as under:-

“11. Section 96 provides for appeals from original decrees. Sub-section (3) of Section 96, however, provided that no appeal shall lie from a decree passed by the court with the consent of

the parties. We may notice here that Order [43](#) Rule [1](#)(m) of Civil Procedure Code had earlier provided for an appeal against the order under Rule 3 Order 23 recording or refusing to record an agreement, compromise or satisfaction. But clause (m) of Rule 1 Order 43 was omitted by Act 104 of 1976 with effect from 1.2.1977. Simultaneously, a proviso was added to Rule 3 Order 23 with effect from 1.2.1977. We extract below the relevant portion of the said proviso :

"Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the court shall decide the question..."

Rule 3A was also added in Order 23 with effect from 1.2.1977 barring any suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

12. The position that emerges from the amended provisions of Order 23, can be summed up thus :

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section [96](#)(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule [3](#) Order [23](#).

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid

compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.8.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.8.2001), filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code... ”

5. In “**Shikha Jaiman v. Balkishan Jaiman**”, 2011(20) RCR (Civil) 947, a Division Bench of Rajasthan High Court (Jaipur Bench), held as under:-

“4. This miscellaneous appeal under Section [19](#) of the Family Court's Act, 1984 has been filed against the judgment and decree dated 03.12.2010 passed by the learned Judge, Family Court No.1, Jaipur in divorce petition No.192 of 2010.

5. It is not disputed that an application under Section [13B](#) of the Hindu Marriage Act was filed jointly by the parties. The order that has been passed is also on the application under Section [13B](#) of the Hindu Marriage Act and a decree has been passed by consent based upon the said application and the statements of the parties recorded by the learned Judge, Family Court.

6. Sub-section 2 of Section [19](#) of the Family Court Act specifically bars the entertaining of any appeal against a consent decree.

7. In that view of the matter, the appeal deserves to be disposed of as not maintainable... ”

6. A co-ordinate bench of this Court in “**Gaurav Arya v. Anandita Jain**”, 2020(1) RCR (Civil) 476; held as under:-

“10. To get out of the rigour of Section 19(2) of the Family Court Act, 1984, the appellant has filed an application under section [25](#)(2) of the Hindu Marriage Act, 1955 for reduction in the amount payable by him as monthly maintenance. The amount of maintenance mentioned in the order dated 20.11.2015 was a condition precedent for the grant of divorce by mutual consent. A conjoint reading of the above two provisions of law together with the circumstances noticed above leave no manner of doubt that the appellant cannot be allowed to resile from the commitment on which the decree of divorce was predicated.

11. Further, the Family Court Act, 1984 is a subsequent legislation and its framers were well aware of the provisions of the Hindu Marriage Act, 1955. Even assuming there is a conflict between Section 19(2) of the Family Court Act, 1984 and section [25](#) of the Hindu Marriage Act, 1955, the latter must yield to the former keeping in view the well known doctrine of generalia specialibus non derogant, otherwise section [19](#)(2) of the Family Courts Act, 1984 will be rendered otiose, which would clearly be contrary to legislative intent...”

7. Further, in “**Ritika Goel v. Ajay Goel**”, 2020(1) RCR (Civil) 844; this Court held as under:-

*“13. We are in agreement with the submissions made by the learned counsel for the respondent-husband 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 the Hindu Marriage Act, 1955. It cannot be over emphasized as has been held by this Court in **FAO No. 5761-2018 (Gaurav Arya v. Anandita Jain)** that Family Courts Act, 1984 is a subsequent legislation and its framers were well aware of the provisions of the Hindu Marriage Act, 1955. If an appeal is to be entertained against a decree of divorce by mutual consent,*

section [19](#)(2) of the Family Courts Act, 1984 would be rendered otiose and would be contrary to the well known doctrine of generalia specialibus non derogant...”

8. Here it would be apposite to refer to a judgment rendered by Hon'ble Division Bench of Allahabad High Court in **“Deepa Bajpai v. Dr. Ashish Mishra”, 2022(3) CivCC 749**; wherein the Court framed the following points of determination:

“9. Taking into consideration the arguments of rival parties, the following points of determination are being framed :

(i) Whether the impugned judgment and decree dated 15.05.2017, is liable to be set-aside as the appellant was under coercion and a fraud has been played with appellant as well as with Court?

(ii) Whether the order dated 10.07.2017, passed by Principal Judge, Family Court, Lucknow was bad in law and is liable to be set aside, as prayed in Appeal No.108 of 2017?

(iii) Whether the impugned judgment and decree which is based upon mutual consent under section [13B](#) of Hindu Marriage Act, 1955 can be challenged by way of appeal/suit?

(iv) Whether for the reasons to grant custody of minor daughter, the appeal deserves to be allowed?”

Upon considering the matter in detail, the Hon'ble Allahabad High Court held as under: -

“19. Point of determination No. (iii) - Whether the impugned judgment and decree, which is based upon mutual consent under section [13](#)(B) of Hindu Marriage Act, can be challenged by way of appeal/suit:

The impugned judgment and decree has been challenged by the appellant in present appeal, filed under section [19](#)(1) of Family Courts Act, whereas, Section 19 (2) of the Act prohibits the

maintainability of such appeal. The provision of Section 19 (2) reads as under :-

"19. Appeal. - (1) x x x x x

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991.

(3) x x x

(4) x x x

(5) x x x

(6) x x x

20. *Learned counsel for the appellant has argued that according to the provisions of Order [43](#), Rule [1A](#) of the Code of Civil Procedure, the impugned decree can be challenged. The provisions of Order [43](#), Rule [1A](#) of the Code of Civil Procedure, is reproduced as under :-*

"1A. Right to challenge non-appealable orders in appeal against decrees. - (1) *Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.*

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been

recorded."

So far as the appeal from original decree is concerned, Section [96](#) (3) C.P.C. bars appeal against consent decree. Section [96](#) (3) C.P.C. reads as under :-

"96. Appeal from original decree. - (1) x x x x x

(2) x x x x

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(4) x x x x"

However, appellant cannot get any relief by way of filing appeal under Order XLI Rule 1A of the Code of Civil Procedure, as the Family Court Act is a special Act and according to Section 20 of the Family Court Act, the provisions of the Act have overriding effect. section [20](#) of the Family Courts Act, reads as under :-

"20. Act to have overriding effect. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

Hence in accordance with law cited above the appeal against judgment and decree under section 13(B) is not maintainable.

21. Appellant cannot challenge the above judgment and decree by way of suit also. The barring provision is inacted under Order [23](#), Rule [3A](#) of the Code of Civil Procedure, which reads as under :-

"3A. Bar to suit. - No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

*22. In the case of **K.Rajam Raju and others v. Smt. P.Rangamma and others**, 2006 (4) AndhLD 61, it has been held by Andhra Pradesh High Court that on the grounds of any fraud, misrepresentation or coercion, an application to set aside the consented decree is maintainable before the same court which passed such order or decree. No separate suit is*

maintainable.

23. *The Himachal Pradesh High Court in the case of **Jamna Devi and others v. Sarswati Devi and others**, referring the law laid down in the case of **Pushpa Devi Bhagat (D) through L.R. Smt. Sadhna Rai v. Rajinder Singh and others**, has held in paragraph 13 as under :-*

"13. Bearing in mind the aforesaid exposition of law, more particularly, the observations made in para - 10 of the aforesaid judgment, it is evidently clear that all questions with regard to lawfulness validity of the agreement or compromise as being void or voidable or where the compromise, in question, having been obtained by a fraud, duress, coercion etc., the same has to be raised before that Court which passed the decree on the basis of any such agreement or compromise. The Court cannot direct the parties to file a separate suit on the subject or no such suit will lie in view of the provisions of Order [23](#), Rule [3A](#) CPC"

24. *Learned counsel for the appellant has argued that after getting the knowledge of divorce decree, appellant approached the trial court under the provisions of Order [47](#), Rule [1](#) and section [151](#) of C.P.C. for recall of judgment and decree dated 15.05.2017 but the application of the appellant was rejected by the Principal Judge, Family Court vide order dated 10.07.2017. The rejection order for the reasons recorded by the Family Court, and in absence of any ground made out within the scope of Order [47](#), Rule [1](#) read with section [151](#) of C.P.C. was rightly rejected. Therefore, in the light of the above discussion, the above third point of determination is decided in negative. The appellant cannot challenge the impugned judgment and decree by way of present appeal/civil suit..."*

9. Keeping in view the aforesaid legal position, it is evidently clear that all questions with regard to lawfulness/validity of the agreement or compromise being void or voidable or where the compromise, in question,

having been obtained by a fraud, duress, coercion etc., the same has to be raised before that Court which passed the decree on the basis of any such agreement or compromise.

10. Keeping in view the above discussion, it is held that in the light of the provisions of Section [19](#)(2) of the 1984 Act; no appeal would lie against the consent decree of divorce under the 1955 Act.

11. Accordingly, the present appeal is disposed of with liberty to the appellant to avail her remedy (if so advised) against the consent decree of divorce under Section 13-B of the 1955 Act; by filing an appropriate application/petition before the Court which passed the said decree.

12. All pending application(s), if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

20.02.2024

Apurva

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No