



FAO-3075 of 2024 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-3075 of 2024 (O&M)

Reserved on 04.07.2024

Pronounced on: July 29, 2024

Prabhdeep Kaur

.....Appellant No.1

Vs.

Harjiwan Singh

.....Appellant No.2

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Rahul Aggarwal, Advocate for the appellants.

SUDEEPTI SHARMA J.

CM-11054-CII-2024

The present application has been filed seeking condonation of delay of 151 days in filing the instant appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit, the application is allowed and delay of 151 days in filing the instant appeal is condoned.

FAO-3075-2024

1. The present appeal is filed against the judgment and decree dated 03.11.2023 whereby petition filed under Section 13-B of Hindu Marriage Act, 1955 (hereinafter referred as 'Act') was allowed and marriage between the petitioners was dissolved w.e.f. 03.11.2023 by passing a decree of divorce by mutual consent under Section 13-B of Hindu Marriage Act, 1955. As per the judgment dated 03.11.2023, the custody of minor daughter

**FAO-3075 of 2024 (O&M)**

was given to petitioner No.2 i.e. mother. It was further stated in the judgment that the parties would remain bound by their statements made in the Court.

BRIEF FACTS OF THE CASE

2. The marriage between the parties was solemnized on 25.11.2016 at village Badrukhan as per the Anand Karaz ceremony. Following the marriage, the parties lived together as husband and wife and cohabited with each other. Out of this wedlock, a daughter was born on 31.01.2018. Due to the temperamental differences, the parties began living separately since December, 2021. Subsequently, they decided to dissolve their marriage by filing a petition under Section 13-B of the Act. The appellants filed a petition bearing No.HMA no.1205 of 2023 in the Court of learned Additional Principal Judge, Family Court, Sangrur on 27.04.2023. The preliminary statements of the parties were recorded on 27.04.2023 and the second motion statements were recorded on 03.11.2023. On 03.11.2023, the learned trial Court passed a decree of divorce under Section 13-B of the Act thereby dissolving their marriage with mutual consent. The custody of the minor daughter was given to the mother-present appellant No.1 herein.

SUBMISSIONS OF THE COUNSEL

3. Learned counsel for the appellants submit that after obtaining a decree of divorce by mutual consent, the appellants have realized their mistake and now they want to stay together for the welfare of the minor child, since their divorce affected the minor child the most.

4. We have heard learned counsel for the parties and perused the whole record.

5. The question of law to be determined by this Court in the



FAO-3075 of 2024 (O&M)

present case is as under:-

Whether an appeal under Section 28 of the Act, against dissolution of marriage by mutual consent under Section 13-B of the Act, would be maintainable in view of the provisions of Section 96(3) of the Code of Civil Procedure, 1908 ?

6. Learned counsel for the appellant has relied upon the following judgments:-

- (i) **Krishna Khetarpal Vs. Satish Lal, 1987 (1) HLR 36;**
- (ii) **Jyoti Vs. Neeraj Kumar Saini 2019 (1) R.C.R. (Civil) 748**
- (iii) **Kulwinder Kaur Vs. Gurmit Singh Jilk, 2023(4) R.C.R.(Civil)**

7. For proper adjudication of the question framed by this Court in the present case, the judgment of **Krishna Khetarpal** (supra) referred to by learned counsel for the appellant is required to be reproduced and the same is reproduced as under:-

"1. Two significant questions of law for determination are :

(1) Whether an appeal under Section 28 of the Hindu Marriage Act ("the Act" for short) is competent against a consent decree in the face of the provisions of sub-section (3) of Section 96 of the Civil Procedure Code; and

(2) Whether a Matrimonial Court can dissolve a marriage by decree of divorce between two Hindus on the basis of a compromise entered into between the parties during the pendency of the divorce petition without following the procedure prescribed by Section 13B(2) and without satisfying the requirement of Section 23(1)(c) of the Act ?"

2. The appellant in the present FAO is the wife and the respondent is her husband. The husband on 26th July, 1980, filed a petition for divorce under Section 13 of the Hindu Marriage Act, 1955 (for short, the Act) on various

**FAO-3075 of 2024 (O&M)**

grounds. During the pendency of the petition on 29th May, 1984, a compromise deed was placed before the Court trying the cause. According to the terms of the compromise a decree for divorce was to be granted in favour of the husband forming it part of the decree-sheet. The learned Judge recorded the statements of the parties and relying on two decisions of this Court in **Devinder Singh Talwar v. Loveleen Kaur, 1982 Marr. L.J. 94 and Jagjit Singh v. Gunwant Kaur, 1978 H.L.R. 696**, granted a decree of divorce in favour of the husband. The wife has appealed to this Court. At her instance, the second question has cropped up and the first question at the instance of the husband.

3. So far as the first question is concerned, nothing much has been said to the maintainability of the appeal. Yet since the question has been referred we need examine it. It is well known that a right of appeal is a creature of the statute. It is a substantive right and not part of procedure. Section 28(1) of the Act provides a right of appeal. It says : All decrees made by the court in any proceedings under the Act shall, subject to the provisions of sub-section (3) be appealable as decree of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction. It is significant that all original decrees made by the Court under the Act are appealable. These decrees may be consent decrees or otherwise. Another significant feature in the Act is the provision of Section 13B whereunder divorce by mutual consent can be obtained. Decree of divorce by mutual consent is also appealable under Section 28 of the Act. So the scheme of the Act is not averse to passing of consent decrees (considerations under Section 23 apart) and the appeal

**FAO-3075 of 2024 (O&M)**

against such decree is maintainable by either party as of right.

4. *In contrast, the appeal under Section 96 of the Civil Procedure Code is on a different footing, for sub-section (3) thereof debars an appeal from a decree passed by the Court with the consent of the parties. The bar to an appeal against consent decree is based on the broad principle of estoppel. It presupposes that the parties to an action can, expressly or by implication, waive or forego their right of appeal, by any lawful agreement or compromise or even by conduct. See in this connection **K.C. Dora v. Guntreddi Annamanaidu, (1974)1 S.C.C. 567**. Here the Court plays no role of justice. The parties do justice to themselves by consent and the Court puts a seal thereon as if the decision is of its own. It is for this reason that the Legislature in its wisdom considered it advisable not to provide a re-hearing of the matter, for else appeal in our processual law nothing but that.*

5. *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 whether the marriage has been solemnized and whether the averments in the petition are true and further there are no impediments in the way as*

**FAO-3075 of 2024 (O&M)**

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 all 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 13-B 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, for the Court under Section 23 will record its approval thereto only if satisfied :

- "(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of Section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and*
- (b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of Section 13, the petitioner has not in any*

**FAO-3075 of 2024 (O&M)**

manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or under influenced, and

(c) the petition (not being a petition presented under Section 11 is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly."

6. *Thus, we answer the first question in the affirmative i.e. in favour of the appellant-wife and against the respondent-husband.*

7. *One can get gripped with the second question by taking a close look at the provisions of Section 13B reproduced hereafter and the provisions of Section 23(1)(bb) and (c) reproduced above :*

"13-B. Divorce by mutual consent. - (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

**FAO-3075 of 2024 (O&M)**

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree."

As hinted earlier, both the sub-sections of the said provision operate at different points of time. The first one operates when presenting the petition. The second one operates when deciding the petition. At the first point of time, the parties jointly have to present a petition on grounds :

- (i) They have been living separately for a period of one year or more before the presentation of the petition;*
- (ii) They have not been able to live together; and*
- (iii) they have mutually agreed that the marriage should be dissolved.*

The Court at that stage except for receiving and registering the petition takes on notice of it. For six months, the petition remains dormant. After six months if the parties remain consensual they move the Court under sub-section (2). They cannot do so later than 18 months after the presentation of the petition. If the petition is withdrawn in the meantime, the Court has nothing to do in the matter. It is only within that period, if the petition is pending, that the court embarks on an enquiry to be satisfied on the following particulars :

- (a) Was the marriage solemnized between the parties ?*

**FAO-3075 of 2024 (O&M)**

(b) Were the parties living separately for more than one year before the presentation of the petition ?

(c) Were they not able to live together at the time of the presentation of the petition and continue to live apart ?

(d) Was there mutual agreement of the dissolution of marriage arrived at before or at the time of the presentation of the petition ? and

(e) that the averments made in the petition are true and conditions under Section 23 of the Act are fulfilled;

It is then and only then that the Court grants decree of divorce by mutual consent. In other words, amongst other factors the Court will exclude the possibility of the consent of either party being obtained by force, fraud or undue influence and see through, if there is any collusion. There is a world of difference between consent and collusion. Whereas consent between two people is a state of being of the same mind, collusion between the two is a secret agreement to deceive. It is an effort to mislead the Court from the true state of affairs. So far goes the letter of the law. But the spirit caught by this Court is reflected from the decision quoted hereafter.

8. *In **Jagjit Singh v. Gunwant Kaur, (supra)** A.S. Bains, J. accorded approval to a compromise between the two spouses at the appellate stage and granted divorce by mutual consent under Section 13-B of the Act without resorting to any discussion. The same judgement is repeated in 1979 H.L.R. 26.*

9. *In **Jagmohan Ahuja v. Smt. Sudesh, 1979 H.L.R. 303**, M.R. Sharma, J. while deciding a revision petition called for the original record of the divorce petition pending between the parties before the Additional District Judge, Ludhiana, and by permitting the conversion of the same to one for*

**FAO-3075 of 2024 (O&M)**

divorce by mutual consent under Section 13B of the Act granted divorce on recording satisfaction that the petition had not been filed with any delay nor the parties were in collusion with each other.

10. In **Gian Dev v. Pushap Lata, F.A.O. No. 110-M of 1976** decided on 28th March, 1977, M.R. Sharma, J. granted divorce to the spouses on their joint statement at the appellate stage and the original petition for annulment of marriage was deemed to have been amended to one for divorce.

11. In **Dharamvir v. Dr. (Mrs.) Promila, F.A.O. No. 76 of 1978** decided on 18th October, 1978, M.R. Sharma, J. allowed divorce by mutual consent at the appellate stage by a deemed amendment to the original petition from back date.

12. In **Dr. Surinder Pal Kaur v. Mohinder Partap Dass, 1982 Marr. L.J. 187, M.R. Sharma, J.** at the appellate stage entertained a petition under Section 13B of the Act directly in this Court and having adjourned the same for six months, on the resumed date of hearing recorded statements of the parties and granted divorce by mutual consent by recording satisfaction that the petition was not collusive.

13. In **Jai Bhagwan v. Anita Ram, 1984 Marr. L.J. 7, I.S. Tiwana, J.** upset a decree passed under Section 13B of the Act by the trial Court on the ground that proper procedure had not been adopted in that case, laying emphasis on the procedural requirements of joint filing of the petition, six months elapsing, but not more than eighteen months, satisfaction of the Court with regard to the marriage and the averments of the petition being true.

14. In **Jagroop Singh and another v. The General Public**, a Division Bench consisting of P.C. Jain and D.S. Tewatia, JJ. allowed a divorce

**FAO-3075 of 2024 (O&M)**

petition by mutual consent in appeal, and upset the view of the trial Judge denying relief on the sole ground that the spouses had grown-up children. The Bench observed that there was no collusion between the parties and the fact that they had five grown-up children would not be a ground for allowing the divorce by mutual consent.

15. *In **Ritu Sobha v. Dr. Dharampal**, FAO, No. 33-M of 1985, a Divisional Bench consisting of D.S. Tewatia and Surinder Singh, JJ. decided at the motion stage on 22nd November, 1985, allowed the divorce under Section 13B of the Act at the appellate stage. The Bench observed :*

"In view of the fact that the parties have been living separately for a period of more than a year, which fact is evident from the findings of the matrimonial court and the parties having now desired to secure a decree of divorce by mutual consent in terms of Section 13B of the Hindu Marriage Act and having made statements to that effect in Court, we are inclined to declare their marriage dissolved and grant a decree of divorce without waiting for the period of six months as envisaged in sub-section (2) of the Section 13B of the Hindu Marriage Act as the said period is merely meant to give time to the parties for rethinking."

The Bench further observed :

"In the present case, the parties have been litigating for quite some time and having not reconciled to live together, it would be futile to prolong their agony six months' period before passing the decree of divorce."

*And lastly one of us (M.M. Punchhi, J.) in **Major Ranbir Sangha v. Mrs. Nargis Sangha**, Crl. Misc. No. 5309-M of 1980, decided on 3rd August, 1982, on the statements of the parties embroiled in long litigation entertained a petition under Section 13B of the Act in this Court and granted*



FAO-3075 of 2024 (O&M)

divorce by observing as follows :

"

I can see no violation of the spirit of the statute when marital discord has otherwise been brought to surface in court, though in criminal proceedings, leaving out any chance of collusion between the parties so as to play a fraud on the statute. Collusion being out of picture and litigation between the parties having remained rife for a time more than six months tends me to invoke the inherent jurisdiction of the High Court (for it is not a District Court hedged by a time factor under Section 13B of the Act) and grant divorce to the parties under the spirit of Section 13B of the Hindu Marriage Act, though not in accordance with its letter. I cannot shut my eyes to the reality of the situation that I have placed before me two human beings, who have wrecked their lives in mutual acrimony, but now standing at their respective launch pads look forward their lives anew. I see no reason why I should refuse their prayer to grant them relief now and let them wait for six months, and make it proven to many a slip between the cup and the lip. And even otherwise the spirit of Section 13B of the Hindu Marriage Act in providing for a six months' period of lapse between the prayer and ultimate grant of divorce is, as it seems to me, based on the good legislative sense that there may be a chance for reconciliation between the parties. I have satisfied myself that there is none whatsoever in the instance case and rather the parties want to break their matrimonial bond right now at this moment."

16. As in plain from the afore-quoted judgment this Court, has granted relief to the parties spirit-actuated, where there was a back-ground of litigation and acrimony and divorce by mutual consent appeared to the Court to be the only solution as asked for by the parties. After all it is

**FAO-3075 of 2024 (O&M)**

perceivable that while applying mind in that regard the Court is put at the stage of Section 13B(2) of the Act and can look back to the conduct and relationship of the parties, to the litigious course they have traveled and other surrounding circumstances to mould the relief. It is also significant to note that the above cases arose only in the backdrop of a long litigious course between the parties. In all these cases, there was more than one year period of the parties living apart and their litigious postures and conduct revealed that their living together was not possible. And additionally there was no collusion when divorce by mutual consent, was asked by waiving the six months hibernating period. This Court in each of the said cases, as it appears to us, perceived substantial compliance of the requisite elapse of periods conditional to the grant of relief and recording satisfaction of free consent and lack of collusion, granted the relief instantly. And in our view rightly. The fact of fruitful years in human live being short and the possibility of the litigating parties rearranging their lives after the divorce by mutual consent, also seem to have been the pervasive factors when this Court granted instant relief without letting the parties to go in for another bout of litigation in the procedure mill.

17. For the aforesaid view thus, we are of the view that if the circumstances warrant, as has been spelled out above, the matrimonial Court can dissolve a marriage by a decree of divorce between two Hindus on the basis of a compromise entered into between the parties during the pendency of the divorce petition without strictly following the procedure prescribed by Section 13B(2) but on satisfying itself of not only the requirements of Section 23(1)(c) but also of the specifically applicable Section 23(1)(bb) of the Act. Thus question No. 2 aforeposed is answered in



FAO-3075 of 2024 (O&M)

the said manner.

18. *Since the questions of law have been answered, the main matter be sent back to the Hon'ble Single Judge for decision.*

ANALYSIS OF JUDGMENT OF KRISHNA KHETARPAL (SUPRA)

The facts in the present case are altogether different and distinguishable from those in the judgment passed in **Krishna Khetarpal** (supra). In **Krishna Khetarpal** (supra), the wife had filed appeal against decree of divorce by mutual consent under Section 13B of the Act, contending that the decree of divorce has been granted without following the procedure mandated by Section 13B (2) and without satisfying the requirement of Section 23 (1) (bb) of the Act. Therefore, this Court in **Krishna Khetarpal** 's case held that appeal under Section 28 would be maintainable against decree of dissolution of marriage under Section 13B of the Act (divorce by mutual consent).

In this case initially there was a dispute between the parties regarding which husband filed petition under Section 13 of the Act against the wife, which was subsequently converted to a petition under Section 13B of the Act. Furthermore, wife was not granted mandatory six months period for reconsideration/rethinking, as provided under Section 13B (2) of the Act. Therefore, that would not amount to a decree under Section 13B by mutual consent, because the wife was aggrieved by Court's decision to deny her sufficient time to rethink/reconcile about her decision of giving consent to the divorce by mutual consent. Therefore, the divorce granted in **Krishna Khsetarpal** (supra) cannot be considered as a valid decree of divorce under Section 13B of the Act, as it lacked mutual consent. It is further clarified that divorce granted in **Krishna Khetarpal** 's case under Section 13B by mutual

**FAO-3075 of 2024 (O&M)**

consent will not amount to divorce under Section 13B of the Act because there was consent of one party only as per the facts and circumstances of the case.

8. The other two judgments have followed the ratio in **Krishna Khetarpal** (supra) and have allowed the appeal.

STATUTORY RELEVANT PROVISIONS OF VARIOUS STATUTES

9. It would be relevant for proper adjudication of the questions framed by us to reproduce certain provisions of various legislation.

10. The relevant provisions, the object and the reasons behind the enactment of Hindu Marriage Act is reproduced as under:-

- i) to liberalize the provisions relating to divorce;
- ii) to enable expeditious disposal of proceedings under the Act; and
- iii) to remove certain anomalies and handicaps that have come to light after the passing of the Act.

THE HINDU MARRIAGE ACT, 1955

Section 5:- Conditions for a Hindu Marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

- (i) neither party has a spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party—
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity

**FAO-3075 of 2024 (O&M)**

- (iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two”.

Section 7:- Ceremonies for a Hindu Marriage.—

“(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”

Section :-13 Divorce - (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

**FAO-3075 of 2024 (O&M)**

[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.—In this clause,—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub—normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or

(v) has been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

[Explanation.—In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

**FAO-3075 of 2024 (O&M)**

[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
- (ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

Section 13-B - “Divorce by mutual consent.—(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.”

**FAO-3075 of 2024 (O&M)**

Section 15 - “Divorced persons when may marry again—When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.”

Section 21-Application of Act 5 of 1908.—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

Section 23- Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that

(a) any of the grounds for granting relief exists and the petitioner [except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and 2 [(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]

(c) [the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and

**FAO-3075 of 2024 (O&M)**

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:

[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]

Section 28 - Appeals from decrees and orders—“(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of

**FAO-3075 of 2024 (O&M)**

sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act under section 25 or section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a 3 [period of ninety days] from the date of the decree or order.”

Section 28A - Enforcement of decrees and orders —“All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced.”

CODE OF CIVIL PROCEDURE, 1908

Section 96-Appeal from original decree—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

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

**FAO-3075 of 2024 (O&M)**

(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed ten thousand rupees.

GENERAL CLAUSES ACT, 1897

Section 3-Definitions—In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,

(3) “affidavit” shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

(37) “oath” shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing

(38) “offence” shall mean any act or omission made punishable by any law for the time being in force;

(62) “swear”, with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing; 3 [(62A) “Union territory” shall mean any Union territory specified in the First Schedule to the Constitution and shall include any other territory comprised within the territory of India but not specified in that Schedule;]

THE CONTEMPT OF COURTS ACT, 1971

Section 2-Definitions—In this Act, unless the context otherwise requires,—

(b) “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

**FAO-3075 of 2024 (O&M)**

Section 10-Power of High Court to punish contempts of subordinate courts.—Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).

Section 12-Punishment for contempt of court.—

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Explanation.—An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in subsection (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary

**FAO-3075 of 2024 (O&M)**

shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

Explanation.—For the purpose of sub-sections (4) and (5),—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm.”

**BHARATIYA NYAYA SANHITA, 2023**

Section 227-Giving False Evidence :- Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise. Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Section 229-Punishment for False Evidence- (1) Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine which may extend to ten thousand rupees.

(2) Whoever intentionally gives or fabricates false evidence in any case other than that referred to in sub-section (1), shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine which may extend to five thousand rupees.

Explanation 1.—A trial before a Court-martial is a judicial proceeding.

**FAO-3075 of 2024 (O&M)**

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court, is a stage of a judicial proceeding, though that investigation may not take place before a Court.

THE CONSTITUTION OF INDIA, 1949

Article 215-High Courts to be courts of record—Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

PRINCIPLES OF STATUTORY INTERPRETATION

A statute is an edict of the Legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker. A statute is to be construed according to the intent of those that make it' and 'the duty of judicature is to act upon the true intention of the Legislature-*the mens or sententia legis*'. The expression 'intention of the Legislature' is a shorthand reference to the meaning of the words used by the Legislature objectively determined with the guidance furnished by the accepted principles of interpretation. If a statutory provision is open to more than one interpretation the court has to choose that interpretation which represents the true intention of the Legislature, in other words the 'legal meaning' or 'true meaning of the statutory provision. The task is often not an easy one and the difficulties arise because of various reasons. To mention a few of them: Words in any language are not scientific symbols having any precise or definite meaning, and language is but an imperfect medium to convey one's thought, much less of a large assembly consisting of persons of various shades of opinion. It is impossible even for the most imaginative Legislature to forestall exhaustive situations and circumstances that may emerge after

**FAO-3075 of 2024 (O&M)**

enacting a statute where its application may be called for. The function of the courts is only to expound and not to legislate.

ANALYSIS OF THE PROVISIONS REFERRED TO ABOVE

1. **Section 21** of the Hindu Marriage Act, 1955 that all proceedings under the Hindu Marriage Act shall be regulated by the Code of Civil Procedure, 1908. Further, the Marginal Heading of Section 21 is **“Application of Act of 5 of 1908.”**
2. **Section 28** of the Hindu Marriage Act, 1955 specifically states that all decrees made by the Court in any proceedings under this Act shall, subject to the provisions of sub-Section 3 be appealable, as decrees of the Courts made in the exercise of its original civil jurisdiction and every such appeal shall lie to the Court to which appeals ordinarily lie from decisions of the Court given in the exercise of its original jurisdiction and the procedure to be followed by the Court in the exercise of its original jurisdiction is the civil procedure.
3. **Section 96(3) of Code of Civil Procedure** talks about appeals from original decrees wherein it has been specifically mentioned that no appeal shall lie from a decree passed with the consent of the parties.
4. Though the provisions of appeal from decrees and orders is also mentioned in the Hindu Marriage Act, which is enacted in the year 1955 but therein also it is stated that all decrees passed by the Court in any proceedings under the Hindu Marriage Act, 1955 shall be appealable as decrees of the Court made in exercise of original civil jurisdiction.
5. A perusal of Section 28 A of Hindu Marriage Act, 1955 which refers to the enforcement of decrees and orders, shows that all decrees and orders made by the Court in any proceeding under this act (Hindu Marriage Act)

**FAO-3075 of 2024 (O&M)**

shall be enforced in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction for time being in force, meaning thereby that the Civil Procedure Code which is an enactment of the Legislation since the year 1908 would be applicable.

6. The statutory provision under Civil Procedure Code can not be ignored, for the provision of appeal as mentioned in Section 28 of Hindu Marriage Act, 1955, which says that all decrees made by the Court in any proceeding under the Hindu Marriage Act are appealable. The procedure which is to be followed for filing of the appeal and maintainability of the appeal is the Civil Procedure Code. This intention of the legislature is shown in Section 21 and 28A of the Act, which clarified that Act 5 of 1908 (Code of Civil Procedure) would be applicable.

7. The intention of the Legislature under Section 28 of the HMA wherein decrees made by the Court in any proceeding under the Hindu Marriage Act 1955 shall be appealable includes all decrees except decree under Section 13-B which is divorce by mutual consent.

8. Since there is a bar under Section 96(3) of CPC that no appeal shall lie from decree passed by the Court with the consent of the parties. Therefore, no appeal shall lie from decree passed by the Court with the consent of the parties under Section 13-B of the Act. Appeal under Section 13-B would be maintainable only on the ground that the consent was obtained by force, fraud or undue influence.

9. In view of Section 96(3) of CPC, no appeal shall lie against the consent decrees. If the legislature had intended for decrees, under Section 13-B to be appealable, then provisions under Sections 21 and 28A of the Act and 96(3) of CPC, would be rendered redundant.

**FAO-3075 of 2024 (O&M)**

10. Provisions of Section 15 of Act, provides that when a marriage has been dissolved by decree of divorce and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again. If the legislation had intended to include Section 13-B of the Act, the wording in Section 15 of the Act that “*either there is no right of appeal against the decree*” would become meaningless.

11. In matrimonial matters, it is often observed that appeals remain pending for extended period and after getting divorce under Section 13-B of the Act in which sufficient time period is given to the parties and the statements are made on oath in the Courts and in the decrees, it is stated that the parties shall remain bound by their statements made in the Court. Permitting parties to subsequently retract their sworn statements and assert a desire to reconcile, by stating that they have realised their mistake and now they want to live together, would amount/constitute Contempt of Court and perjury. Additionally this behavior would undermine the authority of the Court. Insult its proceedings and make a mockery of its verdict.

12. Given the significant pendency in the Courts, allowing parties to further delay proceedings by seeking to set aside a decree, they initially sought by giving their mutual consent, would only make the backlog worse.

13. The litigants must respect the orders/judgments passed by the Courts, that is the reason for enactment of Contempt of Court Act. If the Court themselves begin(s) to stamp the contempt of Court, then the deterrence of contempt of Court act would be washed away.



FAO-3075 of 2024 (O&M)

14. In view of the above, question No.1 is answered in negative. It is held that no appeal under Section 28 of the Act against dissolution of marriage by mutual consent under Section 13-B of the Act would be maintainable, in view of the provisions of Section 96(3) of Code of Civil Procedure, 1908.
15. This Court has reproduced the relevant provisions of the Act to show the intention of the legislature in honouring the belief of the society.
16. Reverting back to the instant appeal. Since the parties have now realised their mistake and want to live together, as per Section 15 of the Act, they are allowed to marry again. There is no bar in the Act for re-marriage of the parties, who have been granted divorce decree.
17. In view of the above, the present appeal is dismissed as not maintainable. The parties are free to marry again.
18. All the pending applications also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

July 29, 2024
sonia arora

Whether speaking/reasoned: Yes

Whether reportable: Yes