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FAO-4543 of 2023 (O&M)

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-4543 of 2023 (O&M)

Reserved on 22.07.2024

Pronounced on: August 01, 2024

Harvinder Singh Cheema

.....Appellant No.1

Vs.

Davinder Kaur Cheema

.....Appellant No.2

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

Present: Mr. J.S. Grewal, Advocate for the appellants.

SUDEEPTI SHARMA J.**CM-15270-CII-2023**

The present application has been filed seeking condonation of delay of 465 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 465 days in filing the instant appeal is condoned.

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1. The present appeal is filed against the judgment and decree dated 31.01.2022 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. 31.01.2022 by passing a decree of divorce by mutual consent under Section 13-B of Hindu Marriage Act,

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1955. As per the judgment dated 31.01.2022, the custody of minor children (Harjap Kaur and Gurfateh Singh) was given to petitioner No.2 i.e. mother (appellant No.2 herein). 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 25.02.2013 at Farid Sarai, District Kapurthala, as per Anand Karaz ceremony. Following the marriage, the parties lived together as husband and wife and cohabited with each other. Out of this wedlock, two children namely Harjap Kaur (daughter) and Gurfateh Singh (son) were born on 18.08.2014 and 07.03.2019 respectively. Due to temperamental differences, the parties began living separately since 05.06.2018. 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.183 of 2021 in the Court of learned Additional Principal Judge, Family Court, Ludhiana (Camp Court Payal) on 07.12.2021. The preliminary statements of the parties were recorded on 07.12.2021 and the second motion statements were recorded on 17.01.2022 by filing application for waiving of statutory period of six months. On 31.01.2022, the learned Family 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 children was given to the mother-present appellant No.2 herein.

SUBMISSIONS OF THE COUNSEL

3. Learned counsel for the appellants submit that after obtaining a

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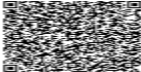
decree of divorce by mutual consent, the appellants have realized their mistake and now they want to stay together for the welfare of their children, since their divorce affected their minor children the most. To this effect, both the parties have duly executed affidavits dated 31.07.2023 and began to live together alongwith their children under one roof at Village Godal, Tehsil Payal, District Ludhiana, Punjab. Since the parties are residing together for the last two years, they filed application bearing CM No.12043-CII-2024 for preponement of the appeal, which was otherwise fixed for 05.09.2024.

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

5. The issue raised in the present case is similar to the issue, which has already been decided by this Court on 29.07.2024 in a detailed judgment passed in FAO No.3075 of 2024, titled as ***“Prabhdeep Kaur Vs. Harjiwan Singh”***. In the case of ***Prabhdeep Kaur’s case (supra)***, it has been held that 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 of the Act to be appealable, then provisions under Sections 21 and 28A of the Act and 96(3) of CPC, would be rendered redundant. Therefore, the present appeal is decided in the same terms.

7. 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 decree of divorce.

8. In view of the above, the present appeal is dismissed as not



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maintainable. The parties are free to marry again.

9. All the pending applications also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 01, 2024
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Whether speaking/reasoned:	Speaking
Whether reportable:	Yes / No