

2024:PHHC:030722-DB

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-M-39-2023 (O&M)
Date of Decision: 29.02.2024

Priya Chhatwal

..... Appellant

Versus

Rahul Chhatwal

..... Respondent

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

Present: Mr. G.S. Verma, Advocate
for the appellant.

HARSH BUNGER J.

1. The instant appeal has been preferred by the appellant-wife (Priya Chhatwal) against judgment and decree dated 06.03.2023 passed by the learned Additional District Judge, Chandigarh, whereby the petition jointly filed by her and respondent-husband (Rahul Chhatwal) 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 Additional District Judge, Chandigarh 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 paragraphs No.5 and 6 of the memorandum of appeal, the appellant has made the following averment:-

“5. That the respondent an alluring false pretext he managed to succeed to make statement on second motion statement in the Ld. Court of ADJ Chandigarh by way of fraud and misappropriation. The appellant never given such statement with her free will, but it was under false pretext or magnetism of respondent.

6. That the appellant never gave her free, legal or valid consent for grant of Divorce by way of mutual consent and the respondent has misused to the faith and trust of the petitioner/appellant.”

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. The issue as regards maintainability of appeal against a consent decree in view of specific bar contained in Section 19(2) of the 1984 Act; has already been dealt with by this Court in **FAO No.733 of 2024** titled as

referring to “*Pushpa Devi Bhagat (D) Th. LR. Sadhna Rai v. Rajinder Singh*”, 2006(3) RCR (Civil) 479, “*Shikha Jaiman v. Balkishan Jaiman*”, 2011(20) RCR (Civil) 947, “*Gaurav Arya v. Anandita Jain*”, 2020(1) RCR (Civil) 476, “*Ritika Goel v. Ajay Goel*”, 2020(1) RCR (Civil) 844 and “*Deepa Bajpai v. Dr. Ashish Mishra*”, 2022(3) CivCC 749, this Court came to conclusion that all the 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., have to be raised before that Court which passed the decree on the basis of any such agreement or compromise.

5. Keeping in view the aforesaid facts as well as the judgment dated 20.02.2024 passed by this Court in **FAO No.733 of 2024**, 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.

6. 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.

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

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

29.02.2024

Apurva

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No