



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

(107)

FAO-1388-2024

Date of Decision:-**13.01.2025**

SUKHJINDER KAUR

... Appellant

Versus

TEJINDER SINGH

... Respondent

-.-

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN**

Present:- Mr. Rajesh Bhateja, Advocate
for the appellant.

ALOK JAIN J.

1. The instant appeal has been preferred by the wife- Sukhjinder Kaur against the judgment and decree dated 18.10.2016, passed by learned Additional District Judge, Ludhiana, whereby the petition filed by her and the respondent/husband-Tejinder Singh under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was allowed and also against the order dated 24.01.2024 vide which the application filed by the appellant-wife for the review/recall of the judgment and decree dated 18.10.2016 has been dismissed.

2. The uncontroverted facts are that appellant was married to the respondent on 20.05.2012, as per Sikh rites and rituals. One male child was born of the said wedlock on 09.08.2014 who is living with the wife. The



appellant-wife has done BDS (Bachelor in Dental Science) and respondent husband has done diploma in Hospitality Management.

3. In the divorce petition it was pleaded that wife is an ambitious woman and wanted to pursue her profession and wanted to establish career as a Dental surgeon but differences arose between the couple soon after their marriage when appellant-wife came to know that respondent-husband is least interested in pursuing his professional career in India and only wanted to immigrate to Canada whereas the appellant wanted to establish her career in India. As per appellant-wife the respondent started pressurizing her to qualify the English Proficiency test while appellant-wife tried to convince him to settle in India by opening her own clinic, wherein the husband can look after the administrative and managerial side, however failed to create any positive impact on the respondent-husband, as a result of which their marriage ran into rough weather and both decided to part their ways.

4. After a wearisome period of endless disputes and wrangling, they mutually agreed to dissolve their marriage by filing a petition on 11.03.2016 under Section 13-B of the Act before the learned Additional District Judge, Ludhiana. On 14.03.2016, joint statement of parties was recorded to the said effect. Second motion statements of both the parties were recorded on 18.10.2016 i.e. after the lapse of statutory period of six months from recording of their first motion statements. In the second motion statements it was reiterated by the parties that due to differences that had developed between them, after their marriage, it was not possible for them to live together and due to differences in regard to career and future prospect etc. they had withdrawn from the society of each other and have been living separately since 10.01.2015. It was also stated by both the parties that all



their disputes regarding maintenance, custody of minor child, permanent alimony etc. stood settled between them.

5. It was agreed between the parties that the wife shall not claim any maintenance allowance or anything from the husband in future under any law. The minor child was to remain in the custody of the wife and husband would not claim his custody in future. After the Court was satisfied that their statements were free from coercion or fear, marriage of the parties was dissolved by a decree of divorce by mutual consent under Section 13-B of the Act vide judgment and decree dated 18.10.2016.

6. On 14.12.2016, appellant-wife filed an application for review/recall of the impugned judgment and decree dated 18.10.2016, by alleging the same to be the result of fraud played by the respondent-husband which came to be dismissed on 24.01.2024.

7. Appellant-wife argued that she had given consent under pressure of respondent and his family. It was stated that when appellant-wife had failed to qualify the English Proficiency Test then the respondent and his family pressurised the appellant-wife to dissolve their marriage by mutual consent so that he could marry an NRI or PR visa holder from Canada. It was further assured by the respondent and his family that the said subsequent marriage would be a "sham" and would be dissolved once the respondent obtained Canadian permanent residency and the respondent would remarry the appellant-afterward. The appellant at first instance refused to participate in such fraudulent acts or misrepresentation before the court and immigration authorities. However, despite her objections, the respondent and his family threatened to sever ties with the appellant, causing her to reluctantly comply with their demands. Therefore, under



compulsion to maintain harmony and save the bond, appellant under pressure filed petition under Section 13-B of the HMA. The appellant was shocked to learn that immediately after obtaining certified judgment and decree on 18.10.2016, the respondent and his parents expelled the appellant and her minor son from the matrimonial home, by stating that their marriage had been dissolved. Further, it was revealed to the appellant that it was a deceitful scheme as respondent intended to marry Mandeep Kaur, a nurse with Canadian permanent residency. Although the appellant moved complaints to the police but no action was taken. In the backdrop of these circumstances, it was stated that fraudulent nature of the decree is highlighted from the fact that the couple never separated prior to 05.11.2016, neither any written settlement was filed, nor terms for monetary payment or return of dowry articles were recorded, which clearly shows that the statements before the court was a sham.

8. Heard learned counsel for the appellant and have carefully perused the record furnished in Court by learned counsel for appellant.

9. It is a matter of record and cannot be disputed by the appellant that the marriage was dissolved under Section 13-B of the Act and decree of divorce was passed only after due procedure as envisaged under Section 13-B (2) of the Act had been followed. It would be appropriate to reproduce Section 13-B as under:-

“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.

(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 mean time, 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.”

10. A perusal of Section 13-B of the Act clearly indicates that during the mandatory six-month period between the first and second motion for mutual consent divorce, either party has the right to withdraw their consent. However, if both parties appear before the court after this period and reaffirm their intention to dissolve their marriage, the court must proceed in accordance with the law. While a decree under Section 13-B can be set aside in exceptional cases if it is demonstrated that they were obtained through fraudulent means or without following due process. However, the threshold for proving fraud is high, requiring substantial and compelling evidence. If the evidence and other material on record show no signs of coercion or undue influence, the court shall not recall or interfere with such decree.

11. Stand taken by the appellant and pleas raised by her do not inspire confidence for the following reasons:-

- i. Firstly the appellant is an educated lady holding degree of Bachelor of Dental Surgery (BDS). It is not a case where she was an illiterate woman, having no support or guidance from near and dear. Admittedly real sister of the appellant herself is a Lawyer, who would necessarily be aware of the provisions of law. More so, the appellant has failed to demonstrate with any cogent proof that



what were the terms of settlement which were not agreed upon or adhered to by the respondent-husband.

- ii. Secondly, statements of parties duly recorded before the learned Trial Court were to the effect that appellant has received the entire dowry articles, *Ishtri Dhan* and compensation from the respondent-husband coupled with the fact that period of six month's time i.e. cooling off period was also given to deliberate and take a considered decision before recording their second statement. Merely pleading fraud is not enough. Appellant was unable to demonstrate that they were residing as husband-&-wife even after the decree of divorce was passed or much-less even after the date 10.01.2015, which is alleged to be the date since both of them were living separately and recorded in decree dated 18.10.2016.
- iii. Thirdly the petitioner is estopped by her own act and conduct and cannot be permitted to abuse the process of law as there is no concealment of fact by the respondent to which the appellant would demonstrate that fraud has been played. Testimony of the respondent-husband could not be shattered and there is no other evidence which could demonstrate any fraud.
- iv. Lastly decree of divorce by mutual consent passed by the learned Trial Court can't be annulled by mere assertion of any party later that the decree was meant to be a sham for facilitating permanent residence in a foreign country.

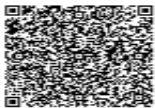
12. It is to be noted that appellant is well-educated and a professional. Certainly the appellant would have gone through the petition as well as affidavit before signing the papers and giving consent for divorce, however, she did not raise any objection or complain to Presiding Officer of



the Court while the court was examining the parties in accordance with Section 13B (2) of the Hindu Marriage Act, 1955. Furthermore, appellant's claim of being pressurized for giving consent by the respondent and his family is not supported by any concrete evidence, and the fact that she did not object during court proceedings weakens her argument. Respondent's subsequent remarriage, although distressing to the appellant, does not retroactively invalidate the divorce. It is unjust to reopen a matter that was settled by mutual consent, especially after a significant lapse of time, as doing so would unnecessarily prolong litigation and affect all parties involved. Element of fraud being played upon the appellant as pleaded has not been substantiated by any cogent evidence on record.

13. Gainful reference in this regard can be made to judgment of Hon'ble the Supreme Court in Harjas Rai Makhija (D) Thr.Lrs vs Pushparani Jain & An MANU/SC/0002/2017, the relevant extract of which is reproduced as under:

"21. We agree that when there is an allegation of fraud by non-disclosure of necessary and relevant facts or concealment of material facts, it must be inquired into. It is only after evidence is led coupled with intent to deceive that a conclusion of fraud could be arrived at. A mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intent to deceive would not render a decree obtained by a party as fraudulent. To conclude in a blanket manner that in every case where relevant facts are not disclosed, the decree obtained would be fraudulent, is stretching the principle to a vanishing point."



14. Moreover, Court proceeding should not be conducted under the shadow of irreverence particularly when a party is aware that a statement made in the Court of law if found to be false would have its repercussions. The appellant appears to have engaged in such conduct. She contended that her husband assured that after permanent settlement in foreign country he will remarry the appellant and appellant was never interested in the fraudulent act of giving false statement or misrepresentation to Court. Such assertion must be rejected as it exists solely in the realm of the appellant’s imagination and can’t be permitted to undermine the integrity of a solemn judicial process, which is intended to render a decree of dissolution based on lawful ground.

15. Therefore, finding no merit, much less any substantial question of law, and coupled with the fact that there is no infirmity or perversity in the impugned order dated 24.01.2024, passed by learned Family Court, appeal is dismissed being devoid of any merit.

13.01.2025

Gaurav Sorot

(ALOK JAIN)

JUDGE

(LISA GILL)

JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No