

PUNJAB AND HARYANA HIGH COURT

RAKESH KUMAR JAIN, J. ANUPINDER SINGH GREWAL, J. .

JYOTI - Appellant No. 1

And

NEERAJ KUMAR SAINI - Appellant No. 2.

FAO-M-363-2018 (O&M)

10.01.2019

Hindu Marriage Act, 1955 Section 28 - Whether an appeal filed under Section 28 would be maintainable, against the judgment and decree by which decree of divorce has been granted by the trial Court under Section 13-B of the Act, de hors the provisions of Section 96 (3) of the Code of Civil Procedure? - Appeal against the consent decree passed under Section 13-B is appealable under Section 28 of the Act and Sub Section 3 of Section 96 of the CPC has no bar.

Mr. Dhiraj Chawla, for the appellants.

RAKESH KUMAR JAIN, J. (Oral) - An interesting proposition has come up before this Court for adjudication as to whether an appeal filed under Section 28 of the Hindu Marriage Act, 1955 (for short 'the Act') would be maintainable, against the judgment and decree by which decree of divorce has been granted by the trial Court under Section 13-B of the Act, de hors the provisions of Section 96 (3) of the Code of Civil Procedure?

2. In brief, marriage of the parties to the lis was solemnized on 06.07.2014 as per Hindu rites and ceremonies at Bahadurgarh, District Jhajjar. They were blessed with a female child namely; Vedanshi. But due to some temperamental differences, both of them had decided to part ways and to obtain decree of divorce by way of mutual consent. Thus, they filed the petition under Section 13-B of the Act before the District Court at Jhajjar. Their first motion statements were recorded on 25.05.2018 followed by the second motion statements recorded on 29.11.2018. It was decided that the husband would pay a sum of ` 4,00,000/- towards full and final settlement to the wife in lieu of the consent for grant of divorce and the custody of their minor child, Vedanshi, would remain with the husband. On the basis of the statements recorded voluntarily, the trial Court passed the decree of divorce on 29.11.2018, dissolving their marriage by way of decree of divorce by mutual consent.

3. It appears that they later on realized their mistake of getting decree of divorce and decided to live together, forgetting their past, forgiving each other for whatever has happened between them, for the better future prospects of their only child-Vedanshi, therefore, they filed the present appeal, though in the form of adversaries but with a

common prayer for setting aside the judgement and decree of divorce granted under Section 13-B of the Act by the trial Court At the first instance, we had asked learned counsel for the appellants to how to cross the hurdle of Section 96 (3) of the Code of Civil Procedure wherein it is provided that no appeal shall lie from a decree passed by the Court with the consent of parties and since, the decree has been passed by the trial Court with the consent of the parties under Section 13-B of the Act, therefore, the appeal is not maintainable.

4. In this regard, learned counsel for the appellants has referred to a judgement of the division bench of this Court rendered in the case of *Krishna Khetarpal, Headmistress, Government Girls High School, Bhuna, Tehsil Fatehabad, District Hisar Vs. Satish Lal*; 1986 (2)PLR 608 in which the same issue had arisen and it has been decided that the appeal against the consent decree passed under Section 13-B is appealable under Section 28 of the Act and Sub Section 3 of Section 96 of the CPC has no bar. Since, this issue is no more res integra as already been decided by this Court, therefore, we have entertained the appeal.

5. We have interacted with both the parties (husband and wife) who are present in Court who have categorically stated that because of unfounded emotions and momentary temperamental differences, committed serious mistake of obtaining decree of divorce by mutual consent and are now repenting. They have also stated that they not only wanted to live together as husband and wife for themselves but also for the sake of their only child, Vedanshi.

6. We have heard learned counsel for the parties to the lis and perused the available record.

7. It is needless to mention that a duty is cast on the Court to make all endeavors for reconciliation between the parties. Perhaps, for this reason, it is provided under Section 13-B of the Act that a petition cannot be filed until and unless both the parties are living separately for one year and more and six months' cool off period is provided for the parties to rethink about their decision to get separated by way of decree of divorce as it has been found that sometime such a drastic decision is taken by the husband and wife out of their charged emotions for which the repent throughout their lives.

8. We are happy that in the present case, both the husband and wife have approached this Court for correcting their mistake not only because they have found that their decision was not good for themselves but also realized that by getting divorce they will be depriving the love and affection of both the father and the mother to their only child.

9. Thus, in these peculiar facts and circumstances, when both the parties have forgiven each other and have decided to live together for a better future for the family which includes Vedanshi, this Court is of the view that it is never late to mend and therefore, we allow this appeal and set aside the judgment and decree dated 29.11.2018 by which marriage of the appellant was dissolved.

Sd/- Anupinder Singh Grewa, J.