

Before Rajan Gupta & Manjari Nehru Kaul, JJ.

RITIKA GOEL—Appellant

versus

AJAY GOEL— Respondent

FAO-M-82-2018

December 6, 2019

A. Hindu Marriage Act, 1955, S.13-B—Family Courts Act, 1984, S.19(2)— Challenge to divorce by mutual consent— Maintainability of appeal—Wife challenged the decree on grounds of fraud, misrepresentation and offering a meagre amount of permanent alimony towards full and final settlement—Held, undisputedly the marriage was dissolved by mutual consent after following due procedure — Provisions of S.13-B make it abundantly clear that either of the parties can withdraw his/her consent during the statutory period of six months between the first and the second motion—If the parties make their second motion statement before the court reiterating their consent and willingness to get the marriage dissolved, the orders in accordance with law must follow—S.13-B nowhere states that a decree of divorce by mutual consent shall be subject to the compliance of certain terms and conditions between the parties—Any party seeking variation of the terms and conditions of divorce can resort to provisions of S.25(2) of the Act of 1955, or any other remedy, but decree of divorce must remain intact unless fraud, undue influence or coercion is proved—in the light of provisions of S.19(2) of the Act of 1984, no appeal would lie against the consent decree of divorce under the Act of 1955—Appeal dismissed.

Held that a perusal of the provisions of Section 13-B of the Act makes it abundantly clear that during the statutory period of six months between the first and the second motion statements of the parties, either of them can withdraw his or her consent for divorce by mutual consent. However, if the parties after the statutory period of six months appear before the court and make a second motion statement reiterating their consent and willingness to get their marriage dissolved then appropriate orders in accordance with law must follow. No doubt a decree obtained under Section 13-B of the Act by practicing fraud may be recalled by the court in exceptional cases but if from the evidence and other material on record there is no element of coercion or any undue

influence, a decree under Section 13-B of the Act cannot be recalled or interfered with.

(Para 11)

Held that coming to the case in hand, it is not the case of the wife that she was forced to get her marriage dissolved on account of any fear or coercion. Her consistent stand is that due to her not being in the right frame of mind she was forced to accede to the paltry amount of money offered to her as permanent alimony and as maintenance to the daughter. Be that as it may, Section 13-B of the Act nowhere talks that a decree of divorce by mutual consent shall be subject to the compliance of certain terms and conditions between the parties. Even if terms and conditions were not settled at the time of recording of the first motion statements, it will not take away the substratum of the decree. In any case, the terms and conditions were finalized at the time of recording the second motion statements and the appellant-wife was well aware of them. Any party seeking variation in the terms and conditions of divorce can resort to the provisions of Section 25(2) of the Hindu Marriage Act, 1955 or to any other remedy, but the decree of divorce must remain intact, unless fraud, undue influence or coercion can be proved. In the instant case, none of the above has been shown to the court. Mere assertion is not enough.

(Para 12)

Held that we are in agreement with the submissions made by the learned counsel for the respondent-husband that in the light of the provisions of Section 19(2) of the Family Courts Act, 1984 no appeal would lie against the consent decree of divorce under the Hindu Marriage Act, 1955. It cannot be over emphasized as has been held by this Court in FAO No. 5761-2018 (*Gaurav Arya v. Anandita Jain*) that Family Courts Act, 1984 is a subsequent legislation and its framers were well aware of the provisions of the Hindu Marriage Act, 1955. If an appeal is to be entertained against a decree of divorce by mutual consent, Section 19(2) of the Family Courts Act, 1984 would be rendered otiose and would be contrary to the well known doctrine of *generalia specialibus non derogant*.

(Para 13)

Neeraj Gupta, Advocate
for the appellant.

G.C.Shahpuri, Advocate
for the respondent.

MANJARI NEHRU KAUL, J.

(1) The instant appeal has been preferred by the wife-Ritika Goel against the judgment and decree dated 05.01.2018 of learned Additional District Judge, Kurukshetra, whereby the petition jointly filed by her and the respondent/husband- Ajay Goel under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was allowed.

(2) Few facts necessary for adjudication of the present appeal as pleaded in the petition filed before the Court below may be noticed.

(3) The marriage between the parties was solemnized on 10.02.2012 as per Hindu rites and ceremonies. One daughter was born out of the said wedlock who is living with the wife. Differences arose between the couple soon after their marriage as a result of which their marriage ran into rough weather. After a wearisome period of endless disputes and wrangling, they mutually agreed to dissolve their marriage by filing a petition under Section 13-B of the Act before the learned Additional District Judge, Kurukshetra. On 03.07.2017, a joint statement of the parties was recorded to the said effect. Thereafter, they recorded their respective first motion statements before the Court below. The second motion statements of both the parties were recorded on 05.01.2018 i.e. after the statutory period of six months from the recording of their first motion statements. In the second motion statements it was reiterated by the parties that due to the differences that had developed between them, after their marriage, it was not possible for them to live together and due to their temperamental differences etc. they had withdrawn from the society of each other. It was also stated by both the parties that all their disputes regarding maintenance, istri dhan, permanent alimony etc. stood settled and they would be bound by the following terms of their divorce:-

“The husband was to pay Rs.12 lakhs to the wife towards permanent alimony which included past, present and future maintenance and out of the said amount Rs.01 lakh was to be received by the wife in cash, Rs. 02 lakhs vide cheque No. 241404 dated 02.07.2017 in favour of the wife, Rs.03 lakhs vide cheque No. 241405 dated 03.07.2017 in favour of their minor daughter and another amount of Rs.03 lakhs was to be deposited in the name of their daughter till her attaining majority. The remaining amount of Rs.06 lakhs was received by the wife vide cheque No.241407 dated 05.01.2018 and cheque No.241408 dated 05.01.2018 in

favour of the minor daughter till her attaining majority.”

(4) 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.

(5) The minor child was to remain in the custody of the wife and the husband was not to claim her custody in future. In case the child wanted to go abroad before she attained majority, the husband was not to have any objection to the same. The wife could file any application on behalf of the child to any authority or department, for the benefit of the child without the permission or consent of the husband.

(6) While recording their second motion statements it was categorically stated by both the parties that they were making their respective statements without any fear, coercion or pressure. It was also stated that they would not file any cases against each other in future and would withdraw all complaints, if any, pending before any forum or court. After the Court satisfied itself that their statements were free from coercion or fear, the marriage of the parties was dissolved by a decree of divorce by mutual consent under Section 13-B of the Act.

(7) Learned counsel for the appellant-wife has vehemently argued that the wife was not in the right frame of mind as she was being maltreated by her husband and thus was under extreme mental pressure when she gave her consent for dissolution of the marriage with the respondent under Section 13-B of the Act. It was further urged that when the first motion statements were made by both the parties on 03.07.2017 no agreement or settlement was arrived at between the parties and it was only at the time of the second motion hearing that she signed on the joint statement in good faith without understanding the implications of what was being offered to her by the husband as permanent alimony towards full and final settlement. It was contended that in fact the respondent-husband had played a fraud upon her by misrepresentation and offered a very meagre amount of Rs.12 lakhs as permanent alimony to her and her daughter. It was submitted that Cheque No. 241407 in the sum of Rs.03 lakhs which was given by the respondent-husband to the wife on 05.01.2018 had since been encashed by the appellant-wife. Another cheque No. 241408 dated 05.01.2018 for Rs.03 lakhs which was in the name of their daughter-Anshika Goel was taken away by the husband and later the appellant-wife came to know that the said amount had been deposited in Canara Bank on 06.01.2019 in the name of Miss Anshika Goel under the guardianship of the respondent-Ajay Goel for a period of 10 years. She

submitted that the same was violative of the orders dated 05.01.2018 passed by the learned Court as the guardianship of their daughter-Anshika Goel had been given to the wife. The *mala fides* were writ large from the act and conduct of the respondent- husband and it was thus obvious that the decree of divorce under Section 13-B of the Act had been obtained by him by playing a fraud upon her and by misrepresentation of facts. It was also urged by the wife that as far as the maintenance granted to the minor daughter was concerned the same could not have been awarded while deciding the divorce petition under Section 13-B of the Act. At best, the terms and conditions of the divorce petition under Section 13-B of the Act could have been confined only to the permanent alimony to be offered to the wife. It was urged that even assuming that the wife had agreed to the husband giving some amount as maintenance to the minor child, the wife could not have taken a decision qua the same. It was strenuously urged that the learned court below without any application of mind and without an evaluation of the circumstances of the parties dissolved their marriage under Section 13-B of the Act. She also urged that in fact there was connivance between the counsel who was representing her and the counsel of the respondent-husband, which led to her getting a paltry sum of Rs.12 lakhs as permanent alimony for herself and for the maintenance of her daughter even though her husband who is an engineer working with Punj Llyod company and getting a salary of more than Rs.01 lakh per month. It was thus prayed that in the above facts and circumstances of the case the impugned judgment and decree passed by the Additional District Judge, Kurukshetra, dated 05.01.2018 be set aside.

(8) The learned counsel for the respondent-husband vehemently opposed the submissions made by the learned counsel for the appellant-wife and submitted that there was no question of any pressure, much less any undue influence having been exerted on the wife to get her second motion statement recorded before the court below. It was further submitted that the second motion statement was recorded after six months of the recording of the first motion statement wherein both the parties had themselves approached the court below for dissolving their marriage under Section 13-B of the Act as it had become impossible for them to continue their marital life. Learned counsel raised a preliminary objection on the maintainability of the instant appeal in view of the provisions of Section 19(2) of the Family Courts Act, 1984 as it specifically bars the entertaining of any appeal against a consent decree of divorce.

(9) We have heard the learned counsel for the parties.

(10) It is a matter of record and cannot be disputed by either of the parties that the marriage was dissolved under Section 13-B of the Act and the decree of divorce was passed only after the 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.”

(11) A perusal of the provisions of Section 13-B of the Act makes it abundantly clear that during the statutory period of six months between the first and the second motion statements of the parties, either of them can withdraw his or her consent for divorce by mutual consent. However, if the parties after the statutory period of six months appear before the court and make a second motion statement reiterating their consent and willingness to get their marriage dissolved then appropriate orders in accordance with law must follow. No doubt a decree obtained under Section 13-B of the Act by practicing fraud may be recalled by the court in exceptional cases but if from the evidence and other material on record there is no element of coercion or any undue influence, a decree under Section 13-B of the Act cannot be recalled or interfered with.

(12) Coming to the case in hand, it is not the case of the wife that she was forced to get her marriage dissolved on account of any fear or coercion. Her consistent stand is that due to her not being in the right frame of mind she was forced to accede to the paltry amount of money offered to her as permanent alimony and as maintenance to the daughter. Be that as it may, Section 13-B of the Act nowhere talks that a decree of divorce by mutual consent shall be subject to the compliance of certain terms and conditions between the parties. Even if terms and conditions were not settled at the time of recording of the first motion statements, it will not take away the substratum of the decree. In any case, the terms and conditions were finalized at the time of recording the second motion statements and the appellant-wife was well aware of them. Any party seeking variation in the terms and conditions of divorce can resort to the provisions of Section 25(2) of the Hindu Marriage Act, 1955 or to any other remedy, but the decree of divorce must remain intact, unless fraud, undue influence or coercion can be proved. In the instant case, none of the above has been shown to the court. Mere assertion is not enough.

(13) We are in agreement with the submissions made by the learned counsel for the respondent-husband that in the light of the provisions of Section 19(2) of the Family Courts Act, 1984 no appeal would lie against the consent decree of divorce under the Hindu Marriage Act, 1955. It cannot be over emphasized as has been held by this Court in FAO No. 5761-2018 **Gaurav Arya** versus **Anandita Jain** that Family Courts Act, 1984 is a subsequent legislation and its framers were well aware of the provisions of the Hindu Marriage Act, 1955. If an appeal is to be entertained against a decree of divorce by mutual consent, Section 19(2) of the Family Courts Act, 1984 would be rendered otiose and would be contrary to the well known doctrine of *generalia specialibus non derogant*.

(14) In light of the above, we do not find any reason to interfere in the impugned judgment dated 05.01.2018 passed by the Additional District Judge, Kurukshetra. Consequently, the instant appeal is dismissed.

Tribhuvan Dahiya