

Before Rajan Gupta & Manjari Nehru Kaul, JJ.

GAURAV ARYA—Appellant

versus

ANANDITA JAIN —Respondent

FAO No.5761 of 2018

November 01, 2019

A. Hindu Marriage Act, 1955—S.13—B—Consent decree incorporating terms and conditions of permanent maintenance-cum-alimony—Sought to be modified under S.25 (2) of HMA, 1955, on the pleas of subsequent change in circumstances, coercion by respondent wife and pressure exerted by the Family Court—Held, once a decree is granted under S.13-B, which is free from any coercion, neither of the parties can be allowed to wriggle out of the agreed terms—Further, if one of the parties acts upon the terms of settlement, the other party cannot be permitted to resile in the absence of any fraud or undue influence, which on facts was held to be not established – Appeal dismissed.

Held that, it is also a matter of record that pursuant to the settlement arrived at between the parties the wife had acted upon the consented terms and withdrawn the cases instituted against the husband. Once a decree under Section 13-B of the Act had been granted and which evidently is free from any coercion, neither of the parties can be allowed to wriggle out of the terms of the same. It cannot be over emphasized that if the parties had settled their dispute and entered into a settlement and a part of it has been acted upon as well by one of the parties the other spouse cannot be permitted to resile from the same in the absence of any fraud or undue influence. In the case in hand the appellant took advantage of the terms and conditions arrived at between the parties as the respondent-wife withdrew all the criminal complaints instituted against him and his family.

(Para 8)

B. Interpretation of Statutes—Doctrine of generalia specialibus non derogan— S.19(2) of Family Court Act, 1984, and S.25(2) of Hindu Marriage Act, 1955—No apparent conflict—Held, even on assumed conflict, the doctrine of generalia specialibus non derogant will apply and the provisions of the latter (general) Act of 1955 have to yield to the former (specific) Act of 1984, or else S.19 (2) of Act of 1984 would be rendered otiose.

Held that, the Family Court Act, 1984 is a subsequent legislation and its framers were well aware of the provisions of the Hindu Marriage Act, 1955. Even assuming there is a conflict between Section 19(2) of the Family Court Act, 1984 and Section 25 of the Hindu Marriage Act, 1955, the latter must yield to the former keeping in view the well known doctrine of *generalia specialibus non derogant*, otherwise Section 19(2) of the Family Courts Act, 1984 will be rendered otiose, which would clearly be contrary to legislative intent.

(Para 11)

C. *Reading down of S.19(2) of Family Court Act, 1984—To mean no appeal would lie against a consent decree of divorce under the Hindu Marriage Act, 1955, except on quantum of maintenance—Held, was also not feasible in the face of unreliable document/salary certificate of the appellant.*

Held that, even if Section 19(2) of the Family Courts Act, 1984 is read down to mean that no appeal would lie against the consent decree of divorce under the Hindu Marriage Act, 1955 and what can be agitated is only the quantum of maintenance, the fact remains that the Salary Certificate produced by the appellant is an unreliable and an untrustworthy document. It discloses only the net salary and is misleading, evasive and does not disclose the entire details.

(Para 12)

Amar Vivek, Advocate
for the appellant.

P.K. Jain, Advocate
for the respondent

MANJARI NEHRU KAUL, J.

(1) The instant appeal has been preferred by Gaurav Arya against the impugned order dated 26.03.2018 passed by the Additional Principal Judge, Family Court, Gurugram, whereby the application filed by him under Section 25(2) of the Hindu Marriage Act, 1955 (for short 'the Act') read with Section 151 CPC seeking modification of the terms and conditions of the permanent maintenance-cum-alimony granted to the respondent was dismissed.

(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

19.09.2002. Two children were born out of the said wedlock. The appellant had sought a decree of divorce from the respondent under Section 13(1)(ia) of the Act on the ground of cruelty. However, during the pendency of the said petition filed before the learned Court below, a compromise was arrived at between the parties and the petition under Section 13(1)(ia) was converted into a petition under Section 13-B of the Act. It would be pertinent to notice that before the recording of the first motion statement of both the parties under Section 13-B of the Act, a joint statement of the parties was recorded before the District Judge, Family Court on 21.04.2015 which is reproduced as follows:-

“We have amicably resolved the dispute between us and it is agreed that we shall file a divorce by mutual consent within 15 days from today. The permanent custody of our two daughters, namely, Sana Arya, aged 9 years and Mehar Arya, aged 7 years shall remain with the respondent and the petitioner shall have free visitation rights as per mutual convenience of the parties and their children. The petitioner shall pay a sum of Rs.55,000/- per month to the respondent as permanent maintenance-cum-alimony with effect from May, 2015 and this amount shall be subject to an increase of Rs.5,000/- every alternate year. The amount shall be deposited by the petitioner in the account No.18493 of the respondent with Corporation Bank. Besides this, he shall also pay the educational expenses of the two daughters of the parties. The respondent shall withdraw the two cases filed by her against the petitioner and his family i.e. under the D.V. Act and the complaint made in the Crime Cell before the institution of the petition for divorce by mutual consent. This petition be dismissed as withdrawn.”

(4) Thereafter, the first motion statement was also recorded on 21.04.2015 which is reproduced as under:-

“Both the parties have appeared and have made a joint statement that they have amicably resolved the dispute between them and have agreed that they shall file a divorce by mutual consent within 15 days from today. The permanent custody of their two daughters, namely, Sana Arya, aged 9 years and Mehar Arya, aged 7 years shall remain with the respondent and the petitioner shall have free visitation rights as per mutual convenience of the parties and their children. The petitioner shall pay a sum of

Rs.55,000/- per month to the respondent as permanent maintenance-cum-alimony with effect from May, 2015 and this amount shall be subject to an increase of Rs.5,000/- every alternate year. The amount shall be deposited by the petitioner in the account No.18493 of the respondent with Corporation Bank. Besides this, he shall also pay the educational expenses of the two daughters of the parties. The respondent shall withdraw the two cases filed by her against the petitioner and his family i.e. under the D.V. Act and the complaint made in the Crime Cell before the institution of the petition for divorce by mutual consent. They have prayed that this petition be dismissed as withdrawn. In view of the joint statement made by the parties, this petition is dismissed as withdrawn. Both the parties shall remain bound by their joint statement made today in the court. File be consigned to the record room.”

(5) The second motion statement of both the parties was also recorded in the same terms as the first motion statement after the mandatory cooling off period of six months on 20.11.2015. Thereafter, the marriage of the parties was dissolved under Section 13-B of the Act.

(6) A perusal of both the above joint statements of the parties and the settlement arrived at between them makes it apparent that the custody of the children was to remain with the respondent-wife and the appellant- husband had been given free visitation rights. However, it had been agreed to by the appellant that he would pay a sum of Rs.55,000/- per month to the respondent as permanent maintenance-cum-alimony with effect from May, 2015 which was to be increased by Rs.5,000/- every alternate year. He had also agreed to pay for the educational expenses of his two daughters. Not only this, it had been agreed upon between the parties that the respondent would withdraw the two cases which had been filed by her against the appellant and his family under the Protection of Women from Domestic Violence Act, 2005 and the complaint made in the Crime Cell before the institution of the petition under Section 13-B of the Act. The husband while filing the petition under Section 25(2) of the Act pleaded that he had been paying the amount agreed upon between the parties with effect from May 2015. On 07.09.2016 he got married to one Tanisha Bedi. However, thereafter his business ran into losses as a result of which he was compelled to take financial help from his second wife and his

family to make both ends meet. Though he tried to re-establish himself in another business, the same also failed to take off as a result of which he had to seek employment in Delpport Aviation Pvt. Ltd. where he was drawing a meager salary of Rs.42,000/- per month and was thus not in a position to generate the amount of Rs.60,000/- per month to be given to the respondent as per the agreed terms and conditions. The appellant further pleaded that the respondent was gainfully employed as a teacher and was drawing a salary of Rs.40,000/- per month. It was further urged by the appellant that the terms and conditions arrived at between the parties at the time of grant of mutual divorce were on account of the compelling circumstances i.e. institution of cases against him and his family as well as the pressure exerted by the Court below. The appellant claimed that the Court while dissolving the marriage under Section 13-B of the Act passed the said decree in a tearing hurry leaving the appellant with no time to ponder over the commitments and assurances given to the respondent. The appellant alleged that he had been threatened by the respondent and her family and had to bow to their threats coupled with the pressure exerted by the learned Court leading to his agreeing to the consent order dated 20.11.2015 passed by the Family Court.

(7) The learned counsel for the respondent on the other hand submitted that the appellant had illicit relations with Tanisha Bedi with whom he got married soon after the decree of divorce dated 20.11.2015. He further submitted that there was no question of any pressure having been exerted or any threat having been extended to the appellant to resolve the dispute between the parties. The respondent alleged that the appellant had been continuously defaulting in the payment of monthly alimony agreed upon between them at the time of grant of mutual divorce. She rather alleged that his employment letter from Delpport Aviation Pvt. Ltd. was in fact a fabricated document procured in collusion with his employer and his sole intention was to mislead the Court on the basis of the above fake document so as to obtain an order decreasing the maintenance amount which had been settled between the parties.

(8) It cannot be disputed that the marriage between the parties was dissolved under Section 13-B of the Act. The said decree of divorce under Section 13-B of the Act was passed only after following due procedure in the manner prescribed under Section 13-B (2) of the Act. The first motion statement was recorded on 21.4.2015 and seven months after the presentation of the petition under Section 13-B of the

Act, the second motion statement of both the parties was recorded after the Court had given a hearing to them. Not only this, the Court had recorded its satisfaction after making an inquiry into the correctness of the terms and conditions arrived at between the parties. The said decree of divorce under Section 13-B of the Act was granted not only in the presence of the learned counsel for the parties but also in the presence of the parties themselves. It would also be pertinent to mention that a divorce petition under Section 13 of the Act was presented earlier by the husband which was permitted to be converted into a petition for divorce by mutual consent subject to certain terms and conditions which also included withdrawal of cases instituted against the husband by the wife. It is also a matter of record that pursuant to the settlement arrived at between the parties the wife had acted upon the consented terms and withdrawn the cases instituted against the husband. Once a decree under Section 13-B of the Act had been granted and which evidently is free from any coercion, neither of the parties can be allowed to wriggle out of the terms of the same. It cannot be over emphasized that if the parties had settled their dispute and entered into a settlement and a part of it has been acted upon as well by one of the parties the other spouse cannot be permitted to resile from the same in the absence of any fraud or undue influence. In the case in hand the appellant took advantage of the terms and conditions arrived at between the parties as the respondent-wife withdrew all the criminal complaints instituted against him and his family.

(9) The submissions made by the learned counsel for the appellant are bereft of any merit and deserve to be rejected outrightly. The allegations of the appellant that there was coercion by the respondent and her family on him to agree to the terms and conditions and there was pressure exerted by the Court to agree to pay an amount of Rs.55,000/- per month as maintenance-cum-alimony on the face of it is laughable and in fact borders on contempt. It is precisely for a situation like the above that for a divorce by mutual consent under Section 13-B of the Act certain statutory conditions have to be adhered to, which include a mandatory period of six months between first and second motion statements of the parties. It is indeed very strange that the husband who admittedly is an educated man and was represented by a counsel, did not during the cooling off period make any complaint much less resile from his earlier statement at the time of the second motion if at all the allegations of the alleged threat or pressure exerted by the Court were correct. In fact, the husband seems to be trying to play a fraud not only upon the respondent but also upon

this Court. If one goes by the sequence of events from the time of inception of the petition under Section 13 of the Act to the filing of the petition under Section 25 (2) of the Act it is not hard to discern that the husband in order to avoid criminal proceedings which had been initiated against him willingly entered into a compromise with the wife with certain terms and conditions including the maintenance of Rs.55,000/- per month so as to lure her into filing a petition under Section 13-B of the Act. Once the respondent had played her part and had acted upon the compromise and divorce under Section 13-B of the Act had been obtained by the appellant-husband, now the appellant very conveniently has come up with a sob story regarding his business losses and financial incapacity making him unable to comply with the terms and conditions as settled between them. It is very strange that soon after his re-marriage, his business collapsed like a pack of cards leaving him in such a pitiable condition that he was left with no other option but to seek financial help from his second wife and his family. Though he has claimed and placed on record an employment letter from one Delpport Aviation Pvt. Ltd. as Unit Manager, a perusal of the same raises eyebrows and exposes the manipulations by the appellant. On the Salary Certificate, his date of joining the said company is shown as 01.09.2017 whereas in his own application he has mentioned the date of joining as 03.09.2016. Further, it is indeed very strange that in the Salary Certificate no deductions qua the PF, TDS etc. have been reflected and there is a mere mention of the net salary being Rs.42,000/-. The deductions which are not in the Salary Certificate, will only enure to the benefit of the appellant. It is obvious that the said document is a procured one which apparently has been prepared with the active connivance of the employer. The accuracy of this Certificate itself is highly doubtful, because it hides more than it reveals.

(10) To get out of the rigour of Section 19(2) of the Family Court Act, 1984, the appellant has filed an application under Section 25(2) of the Hindu Marriage Act, 1955 for reduction in the amount payable by him as monthly maintenance. The amount of maintenance mentioned in the order dated 20.11.2015 was a condition precedent for the grant of divorce by mutual consent. A conjoint reading of the above two provisions of law together with the circumstances noticed above leave no manner of doubt that the appellant cannot be allowed to resile from the commitment on which the decree of divorce was predicated.

(11) Further, the Family Court Act, 1984 is a subsequent legislation and its framers were well aware of the provisions of the

Hindu Marriage Act, 1955. Even assuming there is a conflict between Section 19(2) of the Family Court Act, 1984 and Section 25 of the Hindu Marriage Act, 1955, the latter must yield to the former keeping in view the well known doctrine of *generalia specialibus non derogant*, otherwise Section 19(2) of the Family Courts Act, 1984 will be rendered otiose, which would clearly be contrary to legislative intent.

(12) Even if Section 19(2) of the Family Courts Act, 1984 is read down to mean that no appeal would lie against the consent decree of divorce under the Hindu Marriage Act, 1955 and what can be agitated is only the quantum of maintenance, the fact remains that the Salary Certificate produced by the appellant is an unreliable and an untrustworthy document. It discloses only the net salary and is misleading, evasive and does not disclose the entire details.

(13) In light of the above, we do not find any reason to interfere in the impugned order dated 26.03.2018 passed by the Additional Principal Judge, Family Court, Gurugram. Consequently, the instant appeal is dismissed.

Tribhuvan Dahiya