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IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Appellate Jurisdiction)

FA No. 132 of 2017

Priyanka Devi, wife of Satish Kumar, resident of Pathak Mohalla, PO and PS Garhwa, District- Garhwa, Jharkhand at present residing at C/o Ashok Kumar, resident of Devi Stan Ara, PO and PS- Ara Nagar, District- Bhojpur.
…... ….. Appellant No.2/Appellant

Versus

Satish Kumar, son of Bechan Prasad, resident of Pathak Mohalla, PO and PS Garhwa, District- Garhwa, Jharkhand. …. …. Appellant No.1/Respondent

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(Through V.C.)

CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE RATNAKER BHENGRA

For the Appellant : Mr. Faruque Ansari, Advocate
For the Respondent: Ms. Rakhi Sharma, Advocate

O R D E R
10th February 2022

Per, Shree Chandrashekhar, J.

The wife is aggrieved of the judgment passed in Original Suit No. 22 of 2016 under section 13B of the Hindu Marriage Act, 1955 dated 23rd August 2016 and the decree prepared thereon and sealed on 9th September 2016 on the ground that she was threatened to sign the petition under section 13B of the Hindu Marriage Act, 1955 for a decree of dissolution of marriage by mutual consent.

2. The judgment in Original Suit No.22 of 2016 records that a petition for divorce by mutual consent was filed with affidavit bearing signature of both the parties. The learned Family Court Judge has recorded that in order to satisfy itself that the petition for divorce by mutual consent has been filed with free consent of the parties, statement of both the parties were recorded and they put their signatures thereon.

3. Ms. Rakhi Sharma, the learned counsel for the respondent, has raised a preliminary objection to maintainability of the present First Appeal under sub-section (2) to section 19 of the Family Courts Act, 1984, whereunder an Appeal from a decree or order passed by the learned family Court with consent of the parties is barred.

4. To fortify the above submission, the learned counsel for the respondent has referred to a decision of the Hon'ble Delhi High Court in the

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case of "*Anshu Malhotra v. Mukesh Malhotra*" passed in *Mat. App. (F.C.) 86/2020* dated 3rd June 2020 wherein the Court has observed as under:

> *"**20**. The other High Courts in the judgments referred by us hereinabove, appeared to have held the appeal against a decree for divorce by mutual consent to be maintainable, guided by the reason of making available a remedy to a spouse there against, if such a decree could not have been passed on the material available on record or had been passed in violation of the procedure prescribed by law for passing thereof or if had been obtained by misrepresentation or fraud. However in none of the said judgments save the judgment of the Division Bench of the Gujarat High Court, we find any reference to the proviso to Rule 3 of Order 23 CPC and with respect whereto Supreme Court in Pushpa Devi Bhagat vs. Rajinder Singh MANU/SC/3016/2006: (2006) 5 SCC 566 held as under:*
>
> > *"17. The position that emerges from the amended provisions of Order 23, can be summed up thus:*
> >
> > *(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in section 96(3) CPC.*
> >
> > *(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) Rule 1 Order 43.*
> >
> > *(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3A.*
> >
> > *(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 of Order 23.*
>
> *Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree, is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.8.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.8.2001), filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by second defendant was not maintainable, having regard to the express bar contained in section 96(3) of the Code.""*

5. We may observe that the provision under sub-section (2) to section 19 of the Family Courts Act, 1984 is akin to the provision under sub-section(3) to section 96 of the Code of Civil Procedure, with further expansion of bar under sub-section (2) to section 19, inasmuch as, no appeal

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shall lie also from "any order" passed by the learned Family Court with the consent of the parties.

6. In *"Pushpa Devi Bhagat v. Rajendra Singh" (2006)5 SCC 566* the Hon'ble Supreme Court after referring to section 96 of the Code of Civil Procedure and proviso to Order XXIII Rule 3 and Rule 3-A of the Code of Civil Procedure held that the only remedy available to a party to a consent decree to avoid such consent decree is to approach the Court which recorded the compromise and made a decree in terms of it.

7. In view of the aforesaid legal position, we hold that First Appeal No. 132 of 2017 is not maintainable.

8. There is delay of 255 days in filing the present First Appeal. An application *vide* IA No. 4271 of 2017 has been filed under section 5 of the Limitation Act seeking condonation of the aforesaid period of delay in filing FA No. 132 of 2017.

9. For the purpose of taking up this First Appeal on Board, without recording our satisfaction as to the grounds urged by the appellant seeking condonation of delay, the application for condonation of delay is allowed.

10. We have adopted this procedure for the reason that there are facts pleaded by the appellant in the application under section 5 of the Limitation Act which are seriously controverted by the respondent. We are conscious that if we refer to the averments made in IA No. 4271 of 2017 and record a finding thereon that would prejudice one or the other party.

11. For the aforesaid reasons, FA No. 132 of 2017 is dismissed as not maintainable.

12. IA No. 4271 of 2017 stands disposed of.

(Shree Chandrashekhar, J.)

(Ratnaker Bhengra, J.)

Jharkhand High Court, Ranchi
Dated-10th February 2022
Sharda/S.B.-NAFR