

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE ATUL SREEDHARAN
&
HON'BLE SHRI JUSTICE DINESH KUMAR PALIWAL**

**ON THE 03rd OF JULY 2025
FIRST APPEAL NO.1523 OF 2023**

Smt. Adity Chakraverty

Versus

Teevan Prasad Prajapati

.....
Appearance:

*Shri Ram Sahay Chakravarty – Advocate for the appellant
Shri Ankit Saxena and Shri Nishant Agrawal – Advocates for the
respondent.*

.....
J U D G M E N T

Per: Hon'ble Shri Justice Dinesh Kumar Paliwal

This appeal under Section 28 of Hindu Marriage Act, 1955 (hereinafter referred to as "HMA") has been filed by the appellant challenging the impugned judgment and decree dated 01.05.2023 passed by the First District Judge, Kotma, Anuppur (M.P.) in RCSHM No.87/2022 (Smt. Aditi Chakravarty Vs. Teevan Prasad Prajapati) whereby a decree of dissolution of marriage of the appellant with the respondent under Section 13-B(2) of HMA has been passed.

2. In short, the facts giving rise to the present appeal are that the marriage between the appellant and respondent was solemnized on 13.02.2019 according to Hindu rites and customs. They lived together as husband and wife and the marriage was consummated. The son Adhyan Prajapati was born on 20.01.2022. It is contended that when the appellant was carrying the pregnancy, respondent/husband deserted her and since 28.04.2021 she is living separately. On account of harassment, torture and humiliation by the respondent, appellant became mentally unsound and started to take treatment from Neuro Psychiatrist Dr. Sanjay Mishra since 03.10.2022. She was unable to understand her good and bad. It is further contended that on 24.11.2022 respondent beat her and apologized for his behaviour and asked her to go along with him to the Court to clear all the differences and also assured her to give Rs.5 Lac and took her to the Court. It is further contended that in Kotma Court he took the signature of the appellant on the joint application under Section 13-B(2) of HMA and presented the same before the Court without the consent of the appellant, on 01.05.2023 consent decree was passed. Appellant was suffering from mental illness and consent decree has been obtained by playing fraud with her by the respondent. It is also contended that the first motion took place on 25.11.2022 and statements were recorded and second time statement was recorded on 26.04.2023 and judgment was passed on 01.05.2023 as such judgment has been passed before expiration of the 6 months, therefore, the decree passed on the basis of the consent requires to be set-aside.

3. Learned counsel for the appellant submits that the impugned decree of divorce was obtained by the respondent through fraudulent

means when appellant was of unsound mind. In support of her contention she has filed two medical prescriptions issued by Dr. Sanjay Mishra, consultant Neuro Psychiatrist, Goyal Market, Sirmour Square, Rewa (M.P.).

4. Learned counsel for the appellant further submits that the consent decree has been passed before expiry of 6 months, therefore, for the aforesaid reasons impugned decree of divorce by mutual consent under Section 13-B(2) of HMA be set-aside.

5. On the other hand learned counsel for the respondent by placing reliance on the provisions of Section 96(3) of Code of Civil Procedure Code, 1908 has submitted that an appeal against the consent decree is not maintainable, because as per the aforesaid provisions no appeal shall lie from a decree passed by the Court with the consent of parties.

6. It is further contended that the joint application was filed by the both the parties and their statements were recorded on 25.11.2022 on the date when the joint application was presented and matter was listed on 26.04.2023 almost after five months. On 26.04.2023 again statements of the appellant and respondent were recorded and when despite both counseling they refused to live together and sought divorce through mutual consent. The trial Court having no option, has passed the consent decree. It is further submitted that the factum of mental illness was never taken before the trial Court and same has been raised for the very first time before the appellate Court, therefore, same cannot be considered by the appellate Court as trial Court has no occasion to

consider the same, therefore, learned counsel prays for dismissal of the case.

7. We have heard learned counsel for the parties and perused the record.

8. The following questions arise for our consideration:-

“Whether an appeal under Section 28 of HMA is competent against a consent decree in the face of provision of Section 96 (3) of CPC ?”

9. Section 96 of CPC provides for appeal from original decree. Section 96 (3) of CPC is read as under:-

“96 (3) No appeal shall lie from a decree passed by the Court with the consent of parties.”

10. Order XXIII Rule 3 CPC provides as under:-

“3. Compromise of suit- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise (in writing and signed by the parties) or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith (so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit].

3-A. Bar to suit.- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful]”

11. On perusal of the aforesaid, it is apparent that position under Order XXIII Rule 3 CPC is not anyway different from that under Section 13-B(2) of HMA. Once the Court is satisfied that the compromise arrived at is lawful and has passed the decree, no appeal shall lie under Section 96(3) of CPC. It is clear that no appeal lie against a consent decree. A decree for divorce by mutual consent by District Judge shall stand on the same footing as the concerned decree of Civil Court in the Order XXIII Rule 3 of CPC.

12. In *Anshu Malhotra Vs. Mukesh Malhotra, 2020 SCC Online Del 3255* a Division Bench of the Delhi High Court had the occasion to consider the maintainability of an appeal against a decree of divorce granted by mutual consent under Section 13-B(2) of HMA and it held as under:-

“22. As would immediately become obvious, the law with respect to consent decree is, that though appeal is not maintainable there against but the remedy for an eventuality of consent having been obtained forcefully or fraudulently or having been obtained by misrepresentation is, by applying to the same court. We do not find any reason why the said principle of law of general application should not follow qua decree of divorce by mutual consent when the grounds of appeal are on the basis of facts, which were not before the court which passed the consent decree. It is only the court which passed the consent decree which is capable of going into the said facts and if finds any prima facie merit therein, make inquiry by recording evidence with respect thereto and to thereafter take a final decision. Against such an order, an appeal may lie. We however do not deem it necessary to give a final opinion in this regard. However when the facts on which setting aside of a decree for divorce by mutual consent are pleaded in the appeal for the first time,

it is not in the domain of the appellate court to enter into the inquiry into the said facts and if the same is done, would also deprive the parties of an important right of appeal, by converting the appellate court into a fact finding court."

13. Hon'ble Supreme Court in the case of *Manisha Anand Vs. Nilesch Anand, SLP (C) No.4530/2025*, by its order dated 24.02.2025 reiterated that:-

"2. The Family Court on 17.08.2023 has passed a decree by consent for mutual divorce. The petitioner-wife had preferred an appeal before the High Court which was dismissed as not maintainable.

3. The submission of learned senior counsel for the petitioner is that the consent decree was obtained by fraud and therefore, the same is liable to be recalled.

4. If that be so, the proper remedy available to the petitioner is to approach the Family Court itself for recall of the consent decree rather than filing an appeal."

14. We have perused the impugned judgment dated 01.05.2023 passed by the learned First District Judge, Kotma, District Anuppur (M.P.). It reflect that the learned Court duly recorded the joint statement of both parties after confirming their identity, verified their willingness to part ways, noted the settlement of all claims including alimony and custody and found that the statutory conditions under Section 13-B(2) of HMA were satisfied.

15. The appellant was admittedly present in the Court at both the stages, that is, the first and second motion. Appellant joint statement recorded on both the occasion categorically records that the decision to seek divorce was voluntary and not under any threat, coercion or

inducement. The relevant portion of the statement of the parties recorded by the learned District Judge on 25.11.2022 and 26.04.2023 reads as under:-

“25.11.2022

नाम :- अदिती चक्रवर्ती

01 अनावेदक मेरा पति है हम जन्म से हिन्दू है एवं हिन्दू रीति रीवाज से शासित होते है। मेरा विवाह दिनांक 13.02.2019 को हिन्दू रीतिरिवाज से ग्राम बैढान जिला सिंगरौली मप्र में हुआ था। हम दोनों के एक संतान अद्यन्त प्रजापति का जन्म दिनांक 20.01.2022 को हुआ है। जो मेरे संरक्षण में है। अनावेदक टीवन एवं में दाम्पत्य जीवन का निर्वाह ग्राम पचखुरा थाना तहसील कोतमा में किये है। हमारे बीच गहरा मतभेद उत्पन्न हो जाने के कारण मैं एवं मेरा पति टीवन प्रसाद प्रजापति आपसी सहमति से विवाह विच्छेद की डिक्री प्राप्त करना चाहते है पुत्र अद्यन्त प्रजापति को मैं अपने संरक्षण में रखना चाहती हूँ । भविष्य में अपने स्वयं अथवा पुत्र के लिये भरण पोषण की मांग नहीं करुंगी क्योंकि मैं स्वयं शिक्षिका का कार्य करती हूँ एवं स्वयं व पुत्र का भरण पोषण करने सक्षम हूँ

हम दोनो आपस में विवाह विच्छेद हेतु दृढ़ है। तथा भविष्य में हमारे एक साथ रहने की कोई संभवाना नहीं है। इसलिये हम लोग पारस्परिक सहमति से विवाह विच्छेद करना चाहते है।

25.11.2022

नाम :- टीवन प्रसाद

01 याचिकाकर्ता मेरी पत्नी है। हम जन्म से हिन्दू है एवं हिन्दू रीति रीवाज से शासित होते हैं। मेरा विवाह याचिकाकर्ता से दिनांक 13.02.2019 को हिन्दू रीतिरिवाज से ग्राम बैढान जिला सिंगरौली म.प्र में हुआ था। हम दोनों के एक संतान अद्यन्त प्रजापति का जन्म दिनांक 20.01.2022 को हुआ है। जो मेरी पत्नी के संरक्षण में है। याचिकाकर्ता एवं में दाम्पत्य जीवन का निर्वाह ग्राम पचखुरा थाना तहसील कोतमा में किये है। हम लोगों के बीच में गहरा मतभेद उत्पन्न हो जाने के कारण मैं और मेरी पत्नी अदिती चक्रवर्ती आपसी सहमति से विवाह विच्छेद की डिक्री

प्राप्त करना चाहते हैं पुत्र अद्यन्त प्रजापति हम दोनों की सहमति से मेरी पत्नी के संरक्षण में रहेगा।

हम दोनों आपस में विवाह विच्छेद हेतु दृढ़ हैं। तथा भविष्य में हमारे एक साथ रहने की कोई संभावना नहीं है। इसलिये हम लोग पारस्परिक सहमति से विवाह विच्छेद करना चाहते हैं।

26.04.2023

नाम :- टीवन प्रसाद प्रजापति

कथन अनावेदक :-

01 याचिकाकर्ता मेरी पत्नी है. जिससे मेरा विवाह 13.02.2019 को ग्राम बैढ़न जिला सिंगरौली म०प्र० से संपन्न हुआ था। विवाह के पश्चात् हम दोनों के मध्य आपसी मतभेद हो गये थे। मैं अपने पत्नी से वर्ष 2021 से पृथक रह रहा हूँ। मेरा अपने पत्नी से आपसी वैचारिक मतभेद है जिसके कारण हम लोगों के बीच प्रेम स्थापित नहीं है और विवाद इतना हो गया है कि भविष्य में हम एक साथ नहीं रह सकते हैं।

02 मैंने अपने पत्नी के विरुद्ध विवाह विच्छेद की याचिका आपसी सहमति से प्रस्तुत किया है। दोनों पक्षों को न्यायालय द्वारा समझाईस दी गई थी और हम लोग आपसी सहमति से अलग-अलग होना चाहते हैं। हमारे संसर्ग से एक पुत्र संतान अद्यन्त प्रजापति उम्र 01 वर्ष है जो वर्तमान में मेरी पत्नी के संरक्षण है जिसमें मुझे कोई आपत्ति नहीं है। अब हमारे मध्य कोई विवाद नहीं है। हम लोग आपसी सहमति से विवाह विच्छेद कराना चाहते हैं। हमारे द्वारा सम्मिलित रूप से विवाह विच्छेद का आवेदन प्रस्तुत किया गया है जिसे मैंने पढ़, समझकर अपने हस्ताक्षर किया हूँ।

03 विवाह विच्छेद का आवेदन पत्र प्रस्तुत करने के बाद न्यायालय द्वारा हमें समझाईस भी दी गई है किंतु हमारे बीच साथ रहने की कोई सहमति नहीं बनी है। हम दोनों आपस में विवाह विच्छेद हेतु दृढ़ हैं तथा भविष्य में हमारे एक साथ रहने की कोई संभावना नहीं है इसलिए हम लोग पारस्परिक सहमति से विवाह विच्छेद करना चाहते हैं।

26.04.2023

नाम :- आदिती चक्रवर्ती

कथन याचिकाकर्ता :-

गैरयाचिकाकर्ता मेरा पति है. जिससे मेरा विवाह 13.02.19 को ग्राम बैढ़न, जिला सिंगरौली म०प्र० से संपन्न हुआ था। विवाह के पश्चात् हम दोनों के मध्य आपसी मतभेद हो गये थे। मैं अपने पति से वर्ष 2021 से पृथक् रह रही हूँ। मेरा अपने पति से आपसी वैचारिक मतभेद है जिसके कारण हम लोगों के बीच प्रेम स्थापित नहीं है और विवाद इतना हो गया है कि भविष्य में हम एक साथ नहीं रह सकते हैं।

02 मैंने अपने पति के विरुद्ध विवाह विच्छेद की याचिका आपसी सहमति से प्रस्तुत किये है। दोनों पक्षों को न्यायालय द्वारा समझाईस दी गई थी और हम लोग आपसी सहमति से अलग-अलग होना चाहते है। मेरे द्वारा भविष्य में खर्चा और हर्जा का दावा किसी भी न्यायालय में प्रस्तुत नहीं किया जायेगा। हमारे संसर्ग से एक पुत्र संतान अद्यन्त प्रजापति उम्र 01 वर्ष है. जो वर्तमान में मेरे संरक्षण में है जिसमें मेरे पति का कोई आपत्ति नहीं है। अब हमारे मध्य कोई विवाद नहीं है। हम लोग आपसी सहमति से विवाह विच्छेद कराना चाहते है। हमारे द्वारा सम्मिलित रूप से विवाह विच्छेद का आवेदन प्रस्तुत किया गया है जिसे मैंने पढ़, समझकर अपने हस्ताक्षर की हूँ।

03. विवाह विच्छेद का आवेदन पत्र प्रस्तुत करने के बाद न्यायालय द्वारा हमें समझाईस भी दी गई है किंतु हमारे बीच साथ रहने की कोई सहमति नहीं बनी है। हम दोनों आपस में विवाह विच्छेद हेतु दृढ़ है तथा भविष्य में हमारे एक साथ रहने की कोई सभावना नहीं है इसलिए हम लोग पारस्परिक सहमति से विवाह विच्छेद करना चाहते हैं।”

16. Based on the above joint statement of the parties, the learned District Judge passed the impugned judgment, recorded that both the parties are living separately for more than a year and they are not ready to live with each other and are ready for dissolution of the marriage. The minor son is living with the appellant/petitioner and both the parties have clearly stated that they are not interested to live together and there is no scope for the same. It is also recorded that they cannot be

compelled to live against their will because same will cause mental trauma for both the parties.

Thus, keeping in view the facts and circumstances of the case, allowed the application under Section 13-B(2) of HMA and ordered to dissolve the marriage dated 13.02.2019 from the decree dated 01.05.2023.

17. It is worth mentioning that the appellant is a government teacher and is posted in Central School, Shahdol. She is a well educated woman and mother of one child. It is difficult to accept the contention of the appellant that she was mentally ill and had gone for Court proceedings and made statements under mental illness. She never move any application for review of the decree before trial Court and never filed document, which has been filed first time before this Court to state that she was having mental problem and consent decree has been obtained by playing fraud.

18. Thus the allegation that she had filed joint application for consent decree and had given statement both the time under the mental illness appears to be an after thought and documents issued by Dr. Sanjay Mishra also appears to have been got prepared after passing the decree. It is noteworthy that aforesaid grounds were not available before the trial Court at the stage of the application under Section 13-B(2) of HMA. In joint application filed by the parties, it is clearly stated that they are residing separately before one year of the presentation of the application. They have decided to dissolve their marriage by filing a divorce petition through mutual consent and containing the terms and conditions with respect to alimony, guardianship visitation rights etc.

19. Hon'ble Apex Court in *Pushpa Devi Bhagat Vs. Rajinder Singh (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."

20. In ***Rama Narang Vs. Ramesh Narang (2006) 11 SCC 114*** ***Hon'ble Apex Court*** has held that the a compromise decree is as much a decree as a decree passed on adjudication. It is not merely an agreement between the parties. In passing the decree by consent the Court adds its mandate to the consent. A consent decree is composed of both a command and a contract. A consent decree is a contract with the imprimatur of the Court. 'Imprimatur' means 'authorized' or 'approved'. In other words by passing a decree in terms of a consent order the Court authorizes and approves the course of action consented to. Moreover, the provisions of Order XXIII Rule 3 of CPC requires the Court to pass a decree in accordance with the consent terms only when it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement.

21. In view of the above, it is obvious that the law with respect to consent decree is, that appeal is not maintainable, there against what the remedy for it eventuality of consent having been obtained forcefully or fraudulently or having been obtained by misrepresentation is, by applying to the same Court.

22. As far the submission of not completing the period of 6 months after first motion is concerned i.e immaterial as no objection in this regard was ever raised before trial Court at any point of time. Even otherwise parties can pray for waive by the same. It also cannot be overlooked that on both the motions parties have given their statements making it clear that there is no possibility of living together.

23. Therefore, we do not find any reason why the said principle of law of general application should not follow qua decree of divorce by mutual consent when the grounds of appeal are on the basis of facts, which were not before the Court, who passed the consent decree. The facts of mental illness were not brought into notice of the trial Court and documents also appears to have been got prepared after passing of the decree for mutual consent and same has been pleaded for the first time. It is not in the domain of the appellate Court to enter into the inquiry into the fact, and if the same is done, would also deprive the party of the important right of appeal, by converting the appellate court into a fact finding court.

24. In the light of the aforesaid discussion, we find that the present appeal is not maintainable and even otherwise, there is no error or infirmity in the impugned judgment and decree dated 01.05.2023 passed by the learned First District Judge, Kotma, District Anuppur (M.P.)

Accordingly, the present appeal being of devoid of merits is hereby dismissed.

(ATUL SHREEDHARAN)
JUDGE

(DINESH KUMAR PALIWAL)
JUDGE

Vin**