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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 23.05.2025

+ MAT.APP.(F.C.) 111/2024 & CM APPL. 20467/2024

SMT SUPRIYA GUMBERAppellant

Through: Mr. Sudheer Pandey, Mr.
Rajender Singh, Mr. Rohit
Choudhary, Advs.

versus

SH SUMIT GUMBERRespondent

Through: Mr. L.K. Singh, Mr. Manoj
Chauhan and Mr. Raj Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

RENU BHATNAGAR, J. (ORAL)

1. The present appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as, "HMA"), has been filed by the appellant challenging the Impugned Judgment and Decree dated 16.12.2021 passed by the learned Family Court, Shahdara, Delhi (hereinafter 'Family Court') in HMA No. 902/2021, titled *Supriya Gumber v. Sumit Gumber*, whereby a decree of divorce by mutual consent under Section 13B(2) of the HMA was granted.

2. Briefly stated, the facts giving rise to the present appeal are that the marriage between the appellant and the respondent was



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solemnized on 17.06.2009 according to Hindu rites and customs in Delhi. They lived together as husband and wife, and the marriage was consummated. Two daughters, Ms. Gunika Gumber and Ms. Riya Gumber, were born on 30.01.2012 and 19.11.2014, respectively.

3. It is contended in the appeal that after the marriage, the respondent began harassing, torturing, and humiliating the appellant, with the ulterior motive of forcing her into agreeing to a divorce. He issued threats of grave harm to her life and property, including threats to kill her and their daughters. The appellant endured this abuse in the hope of preserving the marriage, despite being subjected to immense physical and mental cruelty.

4. It is contended in the appeal that under threats and coercion, including being held at knifepoint along with her daughters, the appellant was compelled to sign a petition for divorce under Section 13-B(1) of the Hindu Marriage Act. She signed the first motion petition on 08.09.2021 under extreme duress and without reading its contents. It is alleged that the respondent never provided her with a copy of the petition and falsely promised property and money for the children's future after the divorce.

5. It is contended in the appeal, that the appellant continued to live with her children on the second floor of the matrimonial home, without any financial support from the respondent.

6. It is alleged that she was again coerced into signing the second motion under Section 13-B(2), and the mutual consent divorce decree was fraudulently obtained on 16.12.2021 in HMA No. 902/2021, by exploitation, threats, coercion, and undue influence.



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7. The appellant also filed an application under Section 114 read with Order XLVII of the Code of Civil Procedure, 1908 praying for recall of the decree, which was dismissed by the Family Court on 27.02.2024. Since then, the appellant has borne all expenses for herself and her daughters with no support from the respondent.

8. It is contended in the appeal that the respondent and his family continued to threaten, abuse, and even assault the appellant and her daughters, with incidents including public humiliation and physical violence. Despite the fraudulent decree, the respondent cohabited with the appellant and committed further acts of sexual and emotional abuse.

9. The learned counsel for the appellant submits that the Impugned Decree of Divorce was obtained by the respondent through fraudulent means and under undue pressure. In support of this contention, it is submitted that the appellant lodged the above-mentioned complaint with the SHO, Police Station Jagatpuri, alleging harassment, torture, humiliation, and threats to the life of the appellant and her minor daughters by the respondent and his parents.

10. It is further submitted that the appellant filed multiple complaints, including DD No. 71A dated 19.02.2022 and DD No. 97A dated 22.02.2022, alleging that the respondent had forcibly established physical relations with her and extended threats to kill her after fraudulently obtaining the divorce decree. Based on these complaints, FIR No. 179/2022 dated 26.02.2022 was registered at P.S. Janakpuri, Delhi, under Sections 323, 376, 377, and 506 of the Indian Penal Code.



Procedure, 1973 (2 of 1974):”

15. In **Anshu Malhotra v. Mukesh Malhotra**, 2020 SCC OnLine Del 3255, a Division Bench of this Court had the occasion to consider the maintainability of an appeal against a decree of divorce granted by mutual consent under Section 13B(2) of the HMA. The Court held:

“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 a 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.”

16. Similarly, the Supreme Court in **Manisha Anand v. Nilesh**



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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.”

17. In the present case, the appellant initially pursued the appropriate remedy by filing an application under Order XLVII Rule 1 read with Section 114 of the Civil Procedure Code, 1908 (hereinafter referred to as, ‘CPC’), seeking a review of the consent decree dated 16.12.2021 before the learned Family Court. However, the said application was dismissed on 27.02.2024 on the grounds that no error was apparent on the face of the record and that no discovery of new material was made out. Thereafter, the present appeal has been filed. The relevant part of the Order dated 27.02.2024 passed by the learned Family Court dismissing the review application is reproduced hereinbelow:

“4. The first motion of divorce and second motion divorce had taken place before the Ld. Predecessor of this Court. Both the parties were present alongwith counsel.

5. Order 47 CPC deals with the grounds on



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which application for review is maintainable. It is mentioned therein that application for review can be allowed:

(i) Firstly, on discovery of new and important matter or evidence which was not within the knowledge of parties or could not be produced at the time decree was passed.

(ii) Secondly, on account of some mistake or error apparent on the judgment and order.

(iii) For any other sufficient reason of like feature.

6. However, the ground taken does not fit in any of the above grounds provided for review of the judgment. Needless to say, any other sufficient reason has to be read in accordance with the other two grounds as well.

There is no error apparent in the judgment so passed nor is there discovery of fresh fact or evidence which could not have been produced in support of the mutual consent application. The applicant may avail appropriate remedies as per law. The present review application is not maintainable and same is hereby dismissed.”

18. The appellant, having availed of and exhausted the remedy of review, cannot now circumvent the statutory bar under Section 19(2) of the Family Courts Act, 1984, by filing the present appeal. The maintainability of such an appeal is squarely barred by law.

19. Even otherwise, we have perused the Impugned Judgment dated 16.12.2021 passed by the learned Family Court. It reflects 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



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that the statutory conditions under Section 13B(2) of the HMA were satisfied.

20. The appellant was admittedly present in Court at both the stages, that is, the first and second motion. Her joint statement categorically records that the decision to seek divorce was voluntary and not under any threat, coercion, or inducement. It is also recorded that there were no pending disputes or unresolved issues. The relevant portion of the statement of the parties recorded by the learned Family Court on 16.12.2021, reads as under:

“We are residing separately since 10.08.2018 due to temperamental differences and have not cohabited after the decision of the first motion. I, Supriya, petitioner no.1 received have settled all my claims towards maintenance, alimony and Istridhan etc. pertaining to past, present or future against my husband/ petitioner no. 2 according to the terms and conditions of settlement, without any consideration amount.

We further declare that the marriage between us is irretrievably broken down and we have decided not to live together anymore. Various efforts were made by the relatives, friends and even by court for patch up but of no use.

We further declare that there is no case pending as on date between the parties.”

21. Based on the above joint statement of the parties, the learned Family Court passed the impugned judgment, which *inter alia* records as under:

“3. The joint statement of the parties was recorded who are identified by their respective counsel and their identity is also ascertained



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*from the photographs pasted on the petition.
There is no dispute of identity of the parties.*

5. Both the parties have clearly stated that they are not interested for any patch up and there is no hope for the same. The marriage between the parties is broken down irretrievably and they cannot live together any more.

6. Keeping in view the facts and circumstances of the case, especially that due to temperamental differences and attitudes, parties are not living together for the last more than 03 years and have already settled their claims full and final. Since, there is no hope for saving of the marriage in any situation so the present petition u/s 13-B (2) of HMA is allowed and the marriage between petitioners Smt. Supriya Gumber and Sh. Sumit Gumber taken place on 17.06.2009 is ordered to be dissolved with effect from today through a decree of divorce by mutual consent.”

22. The appellant is stated to be a well-educated woman and a mother of two children. It is difficult to accept that she would attend court proceedings, sign pleadings, and make statements on oath, all under duress and without any attempt to alert the Court.

23. The allegations of coercion, threats, and even criminal conduct by the respondent, raised only after the decree was passed, appear to be an afterthought. Similarly, change of the custody of the children cannot be ground to recall the decree of divorce passed with the mutual consent of the parties.

24. In light of the above discussion, we find that the present appeal is not maintainable and even otherwise, there is no error or infirmity in

