Priyanka Pandey vs Gautam Kumar Shukla on 28 March, 2025

Author: Navin Chawla

Bench: Navin Chawla

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of decision: 28.03.2025
+ MAT.APP.(F.C.) 88/2025 and CM APPL. 12424/2025, CM APPL. 12425/2025
PRIYANKA PANDEY .....Appella
Through: Ms Pallavi Bhatt and Mr. Sahil Bhat, Advs. alongwith petitioner in person.
versus

GAUTAM KUMAR SHUKLA .....Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR
RENU BHATNAGAR, J. (ORAL)

1. This appeal has been filed by the appellant under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as, 'HMA'), challenging the Judgment and Decree dated 11.11.2024 passed by the learned Judge, Family Court, Dwarka District Court, New Delhi (hereinafter referred to as, 'learned Family Court') in HMA No. 2951/2024, titled Priyanka Pandey v. Gautam Kumar Shukla, whereby the learned Family Court has passed a decree of divorce by mutual consent on second motion petition under Section 13B(2) of HMA.

2. It is contended by the learned counsel for the appellant that the aforesaid Decree of divorce by mutual consent under Section 13B(2) of the HMA was fraudulently obtained by the respondent by way of misrepresentation, coercion, fabrication of documents, including the forged signatures and thumb impressions of the appellant. It is further contended that the respondent perpetrated a well-orchestrated fraud upon the appellant and the learned Family Court, by fabricating evidence, manipulating jurisdiction, and securing consent for mutual divorce through coercion, deceit and misrepresentation.

3. As per the averment of the appellant, the respondent fabricated a fraudulent rent agreement so as to establish the jurisdiction of the Courts at Dwarka and to create an illusion of separation, even though the parties were cohabiting at the house in Haryana. To this effect, reliance is placed on the appellant's employment records and rental receipts as also photographs.

4. It is further contended that during the first motion hearing, the appellant appeared before the

learned Family Court with the respondent, who assured that the proceedings were a mere formality for obtaining a Marriage Registration Certificate. It is further contended that when the learned Family Court questioned the appellant about the payment of money agreed upon as part of the settlement, the respondent subtly prompted her to answer affirmatively, and the appellant, under the impression that this was part of the formalities as explained by the respondent, stated that she had received the money which she never did and nor was interested in the same. It is contended that when the learned Family Court asked both parties to sign their statements, before signing, the appellant had expressed hesitation, requesting to read the documents but the respondent again intervened and misrepresented, so she signed the documents without reading it thoroughly.

5. On the day of Second motion petition hearing also, the respondent presented the appellant with a demand draft and pre- emptively instructed her to receive it before the learned Family Court and made her sign the statements in the Court, and he stated to the appellant that accepting the demand draft was simply a procedural requirement for getting the marriage certificate. However, thereafter, outside the courtroom, the respondent snatched the demand draft from her.

6. It is stated that by taking undue advantage of her maternal instincts and genuine hope for a better future, the respondent deceitfully secured her unchallenged consent, knowing well her aspiration to become a mother and save her marriage.

7. It is further contended that during the second motion, when she became suspicious of the situation, she confronted the respondent but he threatened to commit suicide and leave a note implicating her unless she agreed to sign the requisite documentation in the Court, so she was coerced to sign the statement in the Court. It is further claimed that, in fact, during the pendency of the divorce proceedings, the parties stayed together and cohabitated and they maintained both physical and emotional relations.

8. We have considered the contentions made by the appellant and have perused the record.

9. The appeal being against the Decree of dissolution of marriage by mutual consent, straightway, an enquiry is to be made how the appeal is maintainable, inasmuch as an appeal against a consent decree is not available in law, in view of the Section 19(2) of the Family Courts Act, 1984 which bars any appeal from a decree or order passed by the Family Court with the consent of the parties.

10. In Anshu Malhotra v. Mukesh Malhotra, 2020:DHC:2021-DB, this Court held that the remedy of a party challenging a decree of divorce granted by mutual consent is in approaching the learned Family Court itself. 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 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."

11. The Supreme Court, by its Order dated 24.02.2025 passed in SLP (C) No.4530/2025, titled "Manisha Anand v. Nilesh Anand", has also held that in such challenge, the proper remedy is to approach the Family Court itself for recall of the Consent Decree, rather than filing an appeal. We quote from the Order as under:

> "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.
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> 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."

12. In the present case, from the list of dates and events filed by the appellant, it appears that the appellant filed a Review Application before the learned Family Court on 17.01.2025. The same appears to have been withdrawn by the appellant on 12.02.2025. Curiously, neither the review petition nor the Order of his withdrawal has been placed on record by the appellant.

13. As noted hereinabove, the proper remedy for the appellant was to file a review petition, which remedy the appellant availed of, however, later withdrew the same. The appellant, therefore, cannot be allowed to challenge the Impugned Decree in the present appeal.

14. Even otherwise, we have perused the Impugned Decree dated 11.11.2024 along with Short Order passed by the learned Family Court. The Short Order dated 11.11.2024 is relevant to be reproduced as under:-

> "1. Court efforts for reconciliation failed.
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> 2. It is stated that the parties have been living separately since 10.12.21 and the first motion petition for mutual divorce was allowed on 10.7.23 as such there is a separation of more than 18 months between the parties on the date of filing of first

motion petition. There is no possibility/probability of their living together as husband and wife. Even there are no chances of any reconciliation.

3. I have heard the parties and perused the record.

4. Parties got married on 20.11.21. No issue is born out of wedlock. There is no possibility of their re-union. Both the parties have mutually settled their disputes as regards the alimony.

5. Reconciliation efforts made by the Court at the time of first motion as well as today also for considerable time but same is failed.

6. Having heard the parties, I am of the view that there is no possibility of parties resuming co- habitation.

7. Efforts of reconciliation are made again by talking to both the petitioners but without any fruitful result. Petitioners submit that there is no possibility of their living together and they have made up their mind to seek dissolution of their marriage.

8. Joint statement of both the parties has been recorded separately.

9. Vide my separate Judgment dictated and announced in open court today, present petition under Section 13B(2) of HMA is allowed. Consequently, marriage between the petitioner No. I and petitioner No. 2 is dissolved w.e.f. today.

10. Decree be drawn accordingly. Copy of decree be given to both the petitioners as per Rules."

(Emphasis supplied)

15. As is revealed, the first motion petition of divorce was allowed on 10.07.2023, and thereafter, on 11.11.2024, the second motion petition was allowed and decree of divorce was passed. The appellant admits to have been present before the learned Family Court on both occasions; the learned Family Court having inquired from her about the receipt of money on both occasions; and even of having received a demand draft in the proceedings before the learned Family Court during the Second Motion

16. As per Section 13(B) (2) of HMA, 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 meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised 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.

17. Perusal of the Short Order dated 11.11.2024 reproduced above and also the Impugned Judgment clearly reflects the satisfaction of the learned Family Court before recording the statement of the parties and also reflects efforts made by the learned Family Court for effecting reconciliation by it.

18. The Impugned Judgment in the present case does not contain anything wherefrom it can be said that the learned Family Court erred in passing the decree of divorce by mutual consent on the material placed before it on record. The appellant could not point out any error in the aforesaid Judgment. Further, nothing has been pointed out during the arguments or placed on record before the learned Family Court, which could show us that there was some basis on which the learned Family Court should have refused to pass a decree for dissolution of marriage by mutual consent. The first motion petition and the second motion petition were accompanied with the Rental Agreement dated 04.10.2023 along with a MoU dated 24.06.2023 executed between the appellant and the respondent, reciting therein, that the parties have decided to dissolve their marriage by filing a divorce petition through mutual consent and containing the terms and conditions of final settlement with respect to alimony, guardianship, visitation rights etc., and a sum of Rs. 20 lakhs, half of which were agreed to be paid at the time of signing of MoU and the balance amount to be paid at the time of the second motion.

19. We have also enquired from the appellant, who was present in Court, about her educational qualifications. She has submitted that she has completed her MBA. Being a well-qualified lady, it does not appear, at all, believable that she would sign all the documents, appear before the Court, make statements before the Court and even accept a Demand Draft from the Court remaining under some illusion that the same was being done to obtain a Marriage Registration Certificate or due to some coercion or misconception. It appears that the present appeal is nothing but an afterthought, which in law, cannot now be permitted to set aside the Decree lawfully passed by the learned Family Court.

20. Accordingly, we find no merit in the present appeal. The same along with the pending applications is dismissed.

21. There shall be no orders as to costs.

NAVIN CHAWLA, J RENU BHATNAGAR, J MARCH 28, 2025 p/IK/kg Click here to check corrigendum, if any