

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Sr. No.336

FAO-M-172-2004

Decided on : 28.10.2015

Joga Singh

.... Appellant

VERSUS

Darshan Kaur

..... Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE REKHA MITTAL

Present: **Ms.Tanu Bedi, Advocate, with the appellant.**

Mr.Dinesh Nagar, Advocate, with the respondent.

RAJIVE BHALLA, J. (ORAL)

The appellant-husband Joga Singh, challenges judgment and decree dated 04.06.2004, passed by the Additional District Judge, Hoshiarpur, whereby his petition for grant of a decree of divorce, on the twin grounds of cruelty and desertion, has been dismissed.

Counsel for the parties submit that parties have resolved their differences and arrived at a settlement dated 02.07.2015, before the Mediation & Conciliation Centre of this Court agreeing to part ways.

At this stage, counsel for the respondent states that the respondent is ready to admit the plea of desertion provided the appellant withdraws his allegations of cruelty. The respondent-wife

is present in Court and acknowledges the correctness of the statement made by her counsel.

Counsel for the appellant states on instructions, from the appellant, who is present in Court, that the appellant gives up his plea of cruelty.

We have interacted with the parties, explained to them the consequences of their admissions and in order to satisfy ourselves that these admissions are not occasioned by fraud, coercion or collusion, have asked both parties to file their respective affidavits.

Joga Singh (appellant) has filed an affidavit of even date.

A relevant extract reads as follows: -

- “3. That in addition to the terms of settlement reached in the mediation centre, the deponent is withdrawing the allegations of cruelty against the respondent-wife and reassert the ground of desertion taken in the appeal.
4. That the appellant-husband already made the payment of permanent alimony and maintenance as per settlement arrived between the parties in Mediation & Conciliation Centre of Hon'ble High Court.
5. That this affidavit is filed as an undertaking by the appellant-deponent to pass any appropriate order in the above-mentioned appeal praying for grant of divorce between the parties.”

Darshan Kaur (respondent) has also filed an affidavit of even date. A relevant extract reads as follows: -

- “3. That in addition to the terms of settlement reached in the mediation centre, the appellant-husband has made the entire payment of Rs.6 lacs. The last installment of Rs.1 lac has been paid before the grant of divorce. The appellant husband has withdrawn the allegations of cruelty. The deponent admits the ground of desertion and has no objection in granting divorce on ground of desertion. This undertaking by the deponent is by her

free will and without any influence, coercion or collusion.

4. That the deponent admits that the appellant-husband already made the payment of permanent alimony and maintenance as per settlement arrived between the parties in Mediation & Conciliation Centre of Hon'ble High Court.
5. That this affidavit is filed as an undertaking by the deponent to pass any appropriate order in the above-mentioned appeal praying for grant of divorce between the parties.”

Counsel for the parties pray that as the appellant-husband has given up his plea of cruelty and the respondent-wife has accepted the ground of desertion, the settlement may be modified and instead of parties filing a petition under Section 13B of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act'), the impugned judgment and decree may be set aside and the marriage between the parties may be dissolved by grant of a decree of divorce on the ground of desertion.

We have heard counsel for the parties, perused the settlement and the statements made by the parties, duly reflected in their respective affidavits of even date.

The parties were married on 25.12.1989. The appellant-husband filed a petition for grant of a divorce on the grounds of cruelty and desertion. The respondent-wife resisted both grounds by alleging cruelty on the part of the husband and denied the plea of desertion. The trial Court, after framing the issues on the pleas of cruelty and desertion and granting an opportunity to parties to lead

evidence, dismissed the petition by holding that the appellant has not been able to prove his pleas of cruelty or desertion.

Aggrieved by the aforesaid judgment and decree, the appellant-husband preferred the present appeal. As already recorded, the parties effected a settlement before the Mediation & Conciliation Centre of this Court. A relevant extract from the settlement, reads as follows: -

- “5. The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement/Agreement in the presence of the Mediator/Conciliator.
6. The following settlement has been arrived at between the Parties hereto:
 - (a) That the appellant-husband would pay Rs.6,00,000/- in all to the wife respondent as full and final claim of the dispute.
 - (b) Both the parties will seek mutual divorce by filing the divorce of 13-B of Hindu Marriage Act.
 - (c) A sum of Rs.1,00,000/- to pay the wife-Darshan Kaur vide draft No.323695, drawn on Central Co-operative Bank Ltd., has been today.
 - (d) The remaining amount of Rs.5,00,000/- will be paid in 5 monthly installments to the wife as follows:
 - i) the second installment will be paid on 05.08.2015 of Rs.1,00,000/-.
 - ii) the third installment will be paid on 05.09.2015 of Rs.1,00,000/-.
 - iii) the fourth installment will be paid on 05.10.2015 of Rs.1,00,000/-.
 - iv) the fifth installment will be paid on 05.11.2015 of Rs.1,00,000/-.

If the petitioner fails to pay the amount any of the installment at the relevant time he shall pay 12% interest for the delayed period.
 - e) Both the parties will withdraw all the criminal/civil/complaint cases after the receiving

of the whole amount.

- f) The petitioner will deposit the whole amount in the account of respondent-wife regularly, the details of the bank account will be furnished by the respondent-wife to the counsel of the petitioner.
 - g) The last and 6th installment of Rs.1,00,000/- will be paid on the date when both the parties will make their final statement for mutual divorce.
 - h) The petitioner will not be liable to pay any payment from today onwards as maintenance.
7. By signing this Agreement the parties hereto state that they have no further claims or demands against each other with respect to the suit/claim/proceedings filed by both and all the disputes and differences in this regard have been amicably settled by the parties hereto through the process of Conciliation/Mediation and shall not institute any other case against each other with reference to the present claim.”

Admittedly, in furtherance to the agreement, the appellant-husband was required to pay a total amount of Rs.6 lacs. Rs.5 lacs was to be paid in five installments whereas Rs.1 lac was to be paid at the time of grant of a decree of divorce by mutual consent. The parties have, however, made a statement modifying the terms of the settlement. The respondent-wife, by way of her affidavit of even date, has admitted the plea of desertion whereas the appellant-husband has given up his plea of cruelty. The appellant has paid and the respondent has admittedly received Rs.6 lacs.

As we have already interacted with the parties, explained to them the consequences of their respective admissions but as parties still maintain that they are conscious of the consequences of their admissions, find no reason to doubt the bonafides of their

statements. A perusal of the evidence on record would also reveal that there is sufficient evidence to prove that the appellant and the respondent have been residing separately since 1991. The pleadings and the evidence when read with the admission made by the respondent, proves the plea of desertion.

Consequently, we allow the appeal, set aside the judgment and decree dated 04.06.2004, passed by the Additional District Judge, Hoshiarpur, and allow the petition of divorce on the ground of desertion. Decree sheet be drawn up accordingly.

[RAJIVE BHALLA]
JUDGE

28.10.2015
shamsher

[REKHA MITTAL]
JUDGE