

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

Sr. No.412

FAO-M-117-2007

Decided on : 07.12.2015

Krishan Chander

.... Appellant

VERSUS

Manisha

..... Respondent

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

Present: **Mr.Birender Singh Rana, Senior Advocate, with
Ms.Anu Singh, Advocate,with the appellant.**

Mr.Suveer Sheokand, Advocate, with the respondent.

RAJIVE BHALLA, J. (ORAL)

The appellant-husband, challenges judgment and decree dated 02.03.2007, passed by the Additional District Judge, Panipat, dismissing his petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act').

Counsel for the appellant submits that a perusal of the impugned order as well as the pleadings and the evidence on record reveals that the appellant has levelled serious allegations of cruelty and desertion which have been proved by adducing clear and cogent evidence in the shape of the deposition of the appellant, his family members and co-villagers. Counsel for the appellant submits that the appellant does not press the appeal on the ground of cruelty but presses the appeal on the ground of desertion. Counsel for the

appellant invites the attention of the Court to the fact that parties have been living apart since 2004 and despite repeated attempts by the appellant to persuade the respondent to resume matrimony, she has rebuffed these attempts and is living separately without any just cause much less any cause attributable to the appellant. Counsel for the appellant further submits that the appellant is residing in village Siwah, Tehsil and District Panipat whereas the respondent is teaching in a Government School in Delhi and, therefore, is not ready to reside with the appellant in the village.

Counsel for the respondent states on instructions from the respondent, that as the appellant has given up his false plea of cruelty, she is ready to admit the plea of desertion and has no objection if the marriage is dissolved by grant of a decree of divorce on the ground of desertion subject to the appellant agreeing to pay permanent alimony.

We have heard counsel for the parties, appraised the pleadings, the evidence and the impugned order and upon due consideration of the statement made by Manisha (respondent), in Court today, counselled her about the legal consequences of her admission but the respondent stated that she has made the statement with due responsibility and after considering the consequence of her statement. In order to ensure that the statement is not procured or collusive, the respondent was directed to record her statement. The statement made by the respondent, duly identified by her counsel, in

Court today, reads as follows: -

“I have considered the pleadings, the evidence, the fact that we have been residing apart since 2004 and voluntarily without any coercion, fraud or collusion, admit the ground of desertion subject, however to the appellant paying permanent alimony of Rs.17,50,000/- (Rs.Seventeen lacs and fifty thousand only). In case, the appellant does not pay remaining amount of permanent alimony by 31.01.2016, this statement shall be considered null and void.”

A due consideration of the aforesaid facts, the pleadings, the evidence together with the admission made by the respondent, in Court today, reveals that the appellant has been able to make out his plea of desertion which even otherwise has been admitted by the respondent.

The question, that remains, is payment of permanent alimony. Section 25 of the Act places a duty upon a Court to assess permanent alimony while dissolving a marriage. The appellant has voluntarily agreed to pay Rs.17,50,000/- (Rs. Seventeen lacs and fifty thousands) out of which he has paid Rs.5 lacs by way of a demand draft to the respondent. The respondent has no objection and in fact has accepted permanent alimony of Rs.17,50,000/- offered by the appellant.

Considering the aforesaid facts, the appeal is allowed and the marriage between Krishan Chander (appellant) and Smt.Manisha (respondent) is dissolved by grant of a decree of divorce on the ground of desertion.

The appellant shall pay the remaining amount of

permanent alimony on or before 31.01.2016, failing which, the respondent would be at liberty to seek revival of the appeal, in which eventually, the appellant shall not be entitled to refund of Rs.5 lacs, paid to the respondent, in Court today.

Decree sheet be drawn up accordingly.

[RAJIVE BHALLA]
JUDGE

07.12.2015
shamsher

[REKHA MITTAL]
JUDGE