

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

**FAO No. M-76 of 2006
Date of Decision: 31.8.2015**

Sona Rani

.....Appellant

Vs.

Ashok Kumar

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE NAVITA SINGH**

Present:- Mr. Surinder Garg, Advocate for the appellant.

None for the respondent.

RAJIVE BHALLA, J.

The appellant-wife is before us challenging judgment and decree dated 2.1.2006 passed by the Additional District Judge, Moga granting a decree of divorce.

Counsel for the appellant submits that a perusal of the petition for divorce reveals that it is bereft of any specific pleadings levelling allegations of desertion. The trial Court, therefore, did not frame any issue on desertion. A perusal of the finding recorded under Issue No.2, which relates to maintainability of the petition, reveals that the trial Court has held that the plea of desertion has not been proved but, thereafter, went on to hold that the issue of desertion is decided against the respondent (the present appellant). Counsel for the appellant submits that the issue regarding cruelty having been rejected and there being no tangible pleading or issue relating to desertion and the trial

Court having held that plea of desertion is not proved, the finding that desertion is decided against the appellant and a consequent acceptance of the prayer for divorce on the ground of desertion renders the impugned judgment illegal.

No one is present on behalf of the respondent. The case was passed out thrice. A message was then sent to counsel for the respondent to come forward and address arguments but no one has put in appearance. It would also be appropriate to point out that this is the third consecutive date on which counsel for the respondent has failed to put in appearance.

We have heard counsel for the appellant, perused the impugned judgment and decree and appraised the record.

Ashok Kumar- the respondent/husband filed a petition under Section 13 of the Hindu Marriage Act praying for grant of a decree of divorce by pleading that parties were married as per Hindu rites on 11.4.1999. The marriage was simple and no dowry was given or taken and after their marriage, parties decided to live at Moga. Two children, namely, Ashish and Glory were born to the parties. The children are now residing with his wife. A few days after the marriage, the wife started maltreating him and his family members. About two years before the filing of the petition, he discovered that the appellant-wife was taking tobacco and when he objected, she threatened to commit suicide. The appellant-wife refused to have sexual intercourse with him and began to proclaim that the children were not his. The appellant-wife beat the children without any reason. The respondent-husband filed a petition in the women Cell, at Moga in May, 2003. Eventually, a panchayat was convened and under pressure

from the wife, they started residing separately from his parents, in a rented accommodation. The wife eventually left the house without any cause and is now residing in her parents' house for the last about two months.

Upon notice, the appellant/wife put in appearance and filed a written statement controverting averments in the petition and averred that the husband was dissatisfied with the dowry, repeatedly beat her and also forcibly took away the children from her custody etc.

After considering the pleadings, the trial Court framed the following issues:-

- “1. Whether the respondent has treated the petitioner with cruelty? OPP
2. Whether the petition is not maintainable? OPR
3. Whether the petition is taking benefit of his own wrong?OPR
4. Relief.”

The trial Court thereafter called upon the parties to lead evidence. The respondent- husband while examining himself tendered his affidavit Ex.P1, a compromise Mark A and examined PW2 Varinder Kumar and PW3 Brij Moahn as witnesses. The respondent- husband, repeated his allegations in the petition, and his witnesses supported his allegations.

The appellant appeared as her own witness as RW1, denied the allegations levelled by the respondent and alleged that demands of dowry, torture, beatings, harassment etc. are the reasons for their matrimonial dispute. The other witnesses are RW2 Om Parkash and RW3 Ashok Kumar.

After examining the pleadings and the evidence, the trial Court

held that the respondent/husband has failed to prove much less substantiate his plea of cruelty. The trial Court, thereafter, dealt with Issue No.2, the issue relating to maintainability of the petition but strangely enough instead of dealing with the question of maintainability decided the plea of desertion, then also by first recording that desertion is not proved, i.e. is decided against the husband (petitioner) but then held that the issue is decided against the respondent (the wife). A relevant extract further reads as follows:-

“This issue relates to the plea of desertion. In the pleadings as well as in the evidence, it is not mentioned as to when finally, the respondent was turned out of the house of the petitioner, since it is necessary to plead and prove that the parties had deserted each other without reasonable cause for a period of 12 years. So, this issue is not proved and it is decided against the respondent.”

A perusal of the aforesaid extract reveals that the Additional District Judge treated the issue of maintainability as an issue of desertion and held that the issue of desertion is not proved but thereafter recorded that the issue is decided against “the respondent” (wife) whereas if the issue of desertion, if framed, had not been proved it should have been decided against the “petitioner” (husband). Accepting for a moment that the plea of desertion was raised but was not put into issue and parties were alive to the issue, a perusal of the finding under Issue No.2 reveals that the trial Court has itself recorded that the “petitioner” (husband) has failed to prove his plea of desertion but thereafter, by an apparent error held that the issue is

decided against “the respondent” (wife). The plea of cruelty having been rejected, the plea of desertion not having been cast in an issue and the trial Court itself having recorded that desertion has not been proved, the trial Court had no jurisdiction to allow the petition and dissolve the marriage by granting a decree of divorce, on the ground of desertion. We, therefore, allow the appeal, set aside the finding under issue No.2, and set aside the impugned judgment and decree. The petition filed by respondent-husband for grant of a decree of divorce is also dismissed.

Decree sheet be drawn up accordingly.

**(RAJIVE BHALLA)
JUDGE**

**August 31, 2015
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**(NAVITA SINGH)
JUDGE**