IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-270 of 2009

DATE OF DECISION: MAY 13, 2015

SUMAN ...APPELLANT

VERSUS

KARAMJIT ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPAUL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

1. Whether the judgement should be reported in the digest? Yes

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PRESENT: MR. MAHAVIR SINGH SINDHU, ADVOCATE
FOR THE APPELLANT.

MR. V.D.SHARMA, ADVOCATE
FOR THE RESPONDENT.

M. JEYAPAUL, J.

1. Appellant Suman who suffered an ex-parte decree for dissolution of marriage in the petition under Section 13 of the Hindu Marriage Act, 1955 filed by her husband Karamjit has preferred the present appeal.

2. The respondent herein filed a petition invoking the provisions under Section 13 of the Hindu Marriage Act praying for dissolution of marriage with the respondent on the grounds of cruelty as well as desertion. He has contended in the petition that the marriage of the respondent herein with the appellant was solemnized on 14.3.1992. After staying with the respondent for 5 days, the appellant started taunting the respondent. She also abused the respondent. The appellant was quarrelsome from the very

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beginning. She used to pick up quarrel on petty matters. She pressurized the respondent to organize a separate establishment. Her treatment culminated in mental and physical cruelty to the respondent. The appellant stayed with the respondent for just 5 days and thereafter she left for her parental house. She abused the respondent that he was not a suitable match for her. She was brought again to the matrimonial house as per Panchayat decision, but her behaviour remained the same. She called her mother-in-law 'Budhiya'. She thereafter left the matrimonial house without any information. She started insulting the respondent herein even in the presence of his friends to the effect that he was not a suitable match for her. In spite of the efforts taken by the mother of the respondent, the appellant refused to come and live in the matrimonial home.

3. The appellant herein remained ex-parte before the trial Court after she filed written statement.

4. On the side of the respondent, the respondent was examined as PW1, his brother Amarjit as PW2 and his mother Munni Devi as PW3.

5. The trial Court having adverted to the unrebutted evidence adduced by the respondent, chose to grant a decree of divorce on the ground of cruelty as well as desertion.

6. Learned counsel appearing for the appellant vehemently submitted referring to Section 23 of the Hindu Marriage Act, 1955 that even if the appellant remained ex-parte, the trial Court is bound to grant the relief only after it is satisfied that the grounds alleged in the petition were established.

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7. We went through the entire evidence on record. We find that PW1 has categorically deposed that he was not only insulted, but was humiliated in the presence of others that he was not a match for her. She had also misbehaved with the mother of the respondent herein who was examined as PW3. The witnesses on the side of the respondent herein have categorically deposed that the appellant was quarrelsome and treated the respondent herein and his mother Munni Devi cruelly. They have also deposed that the respondent and his mother suffered physical and mental cruelty at the hands of the appellant. Her abusive language also has been spoken to by PW1 to PW3.

8. We find that the above evidence went completely unchallenged by the appellant herein who remained ex-parte. In our considered view, the trial Court has rightly evaluated the evidence to satisfy itself as to whether the grounds of cruelty and desertion herein were established.

9. It was further submitted by learned counsel appearing for the appellant that no issue as regards desertion was formulated by the trial Court, but a finding was given that the appellant also deserted the respondent herein.

10. In our considered view, the divorce proceedings under the Hindu Marriage Act, 1955 are not trial proceedings in a suit where, as per the Code of Civil Procedure, the trial Court is bound to frame issues. Even otherwise, we find that the issue had been inadvertently formulated despite the fact that the respondent herein has set up specifically the grounds of cruelty and desertion in his petition and the appellant on her part had met

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those pleas set up by the respondent in her written statement. When the evidence on record would go to establish that the ground of desertion also was established, the appellant herein cannot take advantage of the inadvertent mistake committed by the trial Court. Even otherwise, in our view, the main ground of cruelty was well established. As it is found that the appellant deserted the respondent herein without any rhyme or reason, all the efforts taken by the mother of the respondent to reunite them to save their marriage had become futile.

11. It was further submitted by learned counsel appearing for the appellant referring to the decision of the Single Bench of Madras High Court in ***Janaki vs. V.Sundaram, 2002(2) Marriage Law Journal, 359***, that the ex-parte judgement passed by the trial Court is illegal inasmuch as the petition under Section 24 of the Hindu Marriage Act, 1955 was pending disposal at that point of time.

12. In the case referred to above, it is found that the wife who was in penury prayed for disposal of the petition under Section 24 of Hindu Marriage Act first in point of time. But the trial Court, in that case, was very adamant in disposing of the main case which was listed despite the pendency of the petition under Section 24 of the Hindu Marriage Act. As the wife could not pursue her petition under Section 24 of the Hindu Marriage Act effectively, it appears that she remained ex-parte. Taking advantage of such a situation, the trial Court was in haste in disposing of the case in absentia of the wife. But, in the instant case, we find there was no plea from the appellant that the application under Section 24 should be

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disposed of. Even otherwise, when she remained ex-parte, the application under Section 24 of the Hindu Marriage Act will have to be dismissed in default. The said application cannot be considered on its face value without adducing any material to substantiate the contention therein. In the absence of the appellant who had not cared to prosecute the application under Section 24 of the Hindu Marriage Act or to defend the petition under Section 13 of the Hindu Marriage Act preferred by the respondent, in our considered view, the trial Court has rightly decreed the suit ex-parte. In the above facts and circumstances, the decision referred by the appellant does not apply to the facts of this case.

13. We find that the trial Court has rightly evaluated the evidence and come to a correct conclusion that the appellant herein not only committed cruelty, but also deserted the respondent herein. We do not find any merit in the appeal. Therefore, the appeal stands dismissed.

(M. JEYAPAUL)
JUDGE

May 13, 2015
Gulati

(RAJ RAHUL GARG)
JUDGE

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