

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

**FAO-M-372-2009 (O&M)
Date of decision: 16-02-2015**

Hardeep Kaur

.....Appellant

Vs.

Rattan Singh Toor

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Sanjeev Pandit, Advocate for the appellant-wife.

Mr. Arun Takhi, Advocate for the respondent-husband.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant – wife against the judgment and decree dated 11.9.2009 passed by the trial court, whereby the petition filed by the respondent-husband under section 9 of the Hindu Marriage Act, 1955 (in short, “the Act”) for restitution of conjugal rights has been allowed.

2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnized on 21.6.1997 at Village Bham, Tehsil and District Hoshiarpur as per Sikh rites. After the marriage, the parties resided together at Village Dhigangarh as husband and wife. Two children namely Amarjot

Kaur and Harjinder Singh were born out of the wedlock. As alleged in the petition under Section 9 of the Act filed by the respondent-husband, marriage was simple. No dowry was taken. After the marriage, the appellant wife started pressurizing the respondent to live in her parents' house as *ghar jamai*. She refused to serve the respondent and his old parents. Her attitude was not cordial towards her mother-in-law. She used to pick up quarrels on petty matters. She left the matrimonial home in the month of July 1998 without intimating the respondent as well as his parents. At that time, she was pregnant. The respondent got convened panchayat. Efforts were made to bring the appellant back to her matrimonial home but she refused to come back. On 11.9.1998, female child was born and the entire expenses on delivery were borne by the respondent. The parents of the respondent visited the house of the parents of the appellant alongwith customary gifts but even at that time her behaviour was not proper. In August 2000, she again left the matrimonial home and stated that she will not come back unless and until the respondent started living in her parents house as *ghar jamai*. With the intervention of Panchayat, she was brought back to her in-laws' house. In August 2001 i.e. on 4.8.2001, she again left the matrimonial home on the ground that she was going to her parents' house on the festival of Rakhi but she did not come back. When the respondent went to take her back, she refused to come back. When she left the matrimonial house, she left both the children there. The respondent alongwith his parents and other respectable persons went to Village Bham several times for bringing her back but she refused to come back. It was given in writing by the panchayat to the respondent that the appellant was not ready to live with him as her mother

was not interested for rehabilitation of her daughter in the matrimonial home. Upon notice in Section 9 petition, the appellant appeared and filed written statement controverting the averments made in the petition. The trial court after considering the evidence on record allowed the petition under section 9 of the Act filed by the respondent-husband vide judgment and decree dated 11.9.2009 impugned herein. Hence the instant appeal by the appellant wife.

3. We have heard learned counsel for the parties and perused the record.

4. On the pleadings of the parties, the trial court framed the following issues:

“1. Whether the petitioner has deserted the respondent from her matrimonial house without any reasonable cause? OPR.

3.Relief.”

In support of his case, the respondent-husband appeared as PW3 and examined PW1 Mohinder Kaur, Sarpanch of Village Dhigangarh, PW2 Malkiat Singh, Tara Singh as PW4 and Gurmail Singh as PW5. On the other hand, the appellant wife appeared as RW1 and examined Kanta Devi as RW2, Panch of Village Bham and Surinder Singh as RW3 - Sarpanch of Village Bham. The respondent-husband in his statement as PW3 deposed that after the marriage, the appellant wife started pressurizing him to live in her parents' house as *ghar jamai*. He being the only bread winner of the family was looking after his old parents. When he refused to live in her parental house, the appellant wife started misbehaving with him and his family members. On the birth of female child, when the respondent and his parents visited the house of the appellant, she did not behave properly. She

left the matrimonial home several times and with the intervention of the panchayat and the respectable persons of the village, she was brought back. She did not improve her behaviour in spite of best efforts made by the respondent. While leaving the matrimonial home, she left both the children in the matrimonial home inspite of the fact that the interim custody of both the children was ordered to be kept with the wife. Even the panchayat of Village Bham gave in writing that the appellant was not ready to live with the appellant and deserted him without any reasonable cause. Similarly, panchayat of Village Dhigangarh made a writing to the effect that the appellant deserted the respondent at the instance of her mother. PW-4 Tara Singh – father of the respondent supported the version given by his son. On the other hand, the appellant wife controverted the allegations made by the appellant-husband. She stated that she was tortured by the respondent and his family members on account of bringing insufficient dowry. She further stated that she never pressed the respondent to live as *ghar jamai*. The trial court after appreciating the evidence on record allowed the petition holding that the appellant deserted the company of the respondent without any cause and passed decree for restitution of conjugal rights in favour of the respondent. The relevant finding recorded by the trial court reads thus:-

“22. I find merit in these arguments of learned counsel for the petitioner because after 17.9.2007, the respondent had lived with petitioner for 8 months, according to compromise, which took place between the parties. The respondent has not brought on record any fact or circumstances, how she was not kept properly by the petitioner, in the matrimonial home. She had not given any single instance which would reflect the neglectful act and conduct of the petitioner. Further this fact

has also come in the cross examination of RW2 Kanta Devi that the petitioner and the respondent were residing separately, in that house and this fact again has come in the cross examination of RW3 Surinder Singh Sarpanch that the petitioner got admitted her daughter in school at Village Dhiangarh; whereas son was not taken by the respondent and son is living at Village Bham with the parents of respondent. Moreover, RW3 Surinder Singh Sarpanch in his cross examination stated that the respondent lived for 8 months in the house of petitioner after compromise, properly.

23. During the course of arguments, learned counsel for the respondent raised point that the respondent was not kept properly as after one month, the petitioner stopped giving them maintenance and this fact was told to RW3 Surinder Singh by the respondent. In my opinion, this argument raised by learned counsel for the respondent has no merit because if the petitioner had not paid the maintenance to the respondent after one month of the said compromise, then the respondent in normal circumstances would have made complaint in the court, as the matter was still going on or brought this fact to the notice of panchayat or other Forum. RW3 Surinder Singh has stated that the petitioner is still ready to keep the respondent but he tried to avoid the situation by saying that he is not having sufficient means but this fact stands contradicted by RW1 Hardeep Kaur as she stated in the cross examination that the petitioner is having agricultural land and is having tractor and owning 8 kilas of land. So the financial position of the petitioner is good and he is having means to maintain the respondent and the children.

24. During the course of arguments, learned counsel for the petitioner has argued that the respondent had left the company of the petitioner without any cause as she used to put pressure upon him to live separate. Even the respondent herself admitted in her cross examination that she compelled him to live

separate from her parents, to which he refused. He raised point that the petitioner is the only person to look after his aged parents as his other two brothers are at abroad. He further raised point that there is no truth in the version of the respondent that she was beaten by the petitioner on account of dowry, as there is no cogent and clinching evidence on the file, in this respect. The cross examination on this aspect upon the respondent shows that she even does not remember any date, month or year when the petitioner had beaten her. Moreover, there is no such evidence that she had lodged any report with the police or anywhere else regarding the maltreatment given to her on account of dowry.

Xx xx xx xx xx xx x

29. So taking into consideration the entire evidence led by both sides, in my opinion, the respondent has deserted the company of the petitioner without any cause. Accordingly, this issue is decided in favour of the petitioner and against the respondent.”

5. In the present case, it has been categorically recorded by the trial court that the appellant wife has deserted the respondent-husband without any reasonable cause. The allegation of demand of dowry levelled by her has been held to be false. The respondent husband convened panchayat two-three times to settle the matter. The testimony of Surinder Singh RW3 – Sarpanch of Village Bham also lends support to the case of the respondent-husband. The appellant-wife has not been able to show sufficient cause for withdrawing from the society of the respondent-husband. Her plea that she was not kept properly by the respondent husband was found to be vague as in pursuance of compromise dated 17.9.1997, she lived with the respondent for eight months and during that period no complaint was lodged by her against his act and conduct. The petition under

Section 9 of the Act for restitution of conjugal rights filed by the respondent husband has, thus, rightly been allowed by the trial court. The findings have been recorded by the trial court after examining the evidence on record. Learned counsel for the appellant has not been able to show any illegality or perversity in the said findings which may call for interference by this Court. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

February 16, 2015
'gs'

(Sneh Prashar)
Judge