

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

Sr. No. 571

FAO-M-355-2010

Pronounced on: 28th November, 2015

Paramjit Singh

.... Appellant

VERSUS

Dilpreet Kaur

..... Respondent

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

Present: **Mr.Sarwan Singh, Senior Advocate, with**
 Mr.N.S.Rapri, Advocate, for the appellant.

Mr.Akash Singla, Advocate, for the respondent.

RAJIVE BHALLA, J.

The appellant-husband, challenges order dated 04.09.2010, passed by the Additional District Judge, Ludhiana, dismissing his petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the “1955 Act”), for grant of a decree of divorce.

The parties were admittedly married on 23.10.1994 as per Sikh rites at Barnala. At the time of marriage, both parties were working. The appellant was working as an operation theatre assistant at Amritsar whereas the respondent-wife was working as a staff nurse at DMC Hospital, Ludhiana. A female child Parampreet Kaur was born to the parties on 08.08.1996, at Amritsar. At present, the appellant is working in a Government Hospital, at Amritsar whereas the respondent is working in Civil Hospital, Barnala.

The appellant-husband filed a petition for divorce on 11.11.2008, alleging cruelty and desertion by pleading that the respondent-wife treated his mother with disrespect. Her attitude towards the appellant and his parents was non-cooperative and disrespectful and her heart was in living at a place close to the residence of her parents at Barnala. The appellant further pleaded that the respondent resided with him at Amritsar barely for a period of two year and even during this period, she was working at DMC, Hospital, Ludhiana, upto March, 1995. The respondent-wife was selected as a staff nurse in the year 1998 and got herself posted to Civil Hospital, Barnala, against the wish of the appellant. The appellant made repeated attempts to ensure that the respondent lives with him and eventually at the instance of the parents of the respondent, got himself transferred to Rajendra Hospital, Patiala, in September, 1998. The appellant's transfer failed to improve the relationship as the respondent insisted that they should live at Barnala with her parents. The appellant was harassed to such an extent that he got himself re-transferred to Amritsar. The appellant went to Barnala but has not been allowed to meet his daughter though he has been sending money for his daughter. The parties have not cohabited since 1998 as husband and wife, thereby proving that the respondent-wife has deserted the appellant.

The respondent filed a reply, controverting averments in the petition, admitting that at the time of marriage, she was working

at DMC, Hospital, Ludhiana but stated that as she was selected for a government job, she is now posted at Barnala. She is looking after the minor daughter of the parties who is studying. The posting of the respondent is a condition of her service and, therefore, does not raise an inference of desertion. The respondent specifically denied that she had ever deserted the appellant or that she intended to break matrimonial ties.

The appellant filed replication, controverting averments in the reply and reiterating averments in the petition.

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 respondent has deserted the petitioner for the last more than two years before filing of present petition? OPP
3. Relief.”

A perusal of the issues reveals that the trial court has framed two issues namely the first of cruelty and the second of desertion. The appellant, thereafter examined himself as PW-1, tendered his affidavit Ex.PW-1/A in which he deposed in consonance with averments in the petition and proved documents Ex.P1 to Ex.P3. The appellant's mother PW-2 Kulwinder Kaur, filed her affidavit Ex.PW-2/A, corroborating the deposition of the

appellant. PW-3 Gurnam Singh, an uncle of the appellant, tendered his affidavit Ex.PW-3/A, corroborating the deposition by the appellant and PW-2 his mother. PW-4 Gurmeet Singh, another uncle of the appellant, tendered his affidavit Ex.PW-4/A whereas PW-5 Pardeep Kumar, Senior Assistant in the office of DRME, proved document Ex.P-1.

The respondent-wife, on the other hand, stepped into the witness box as RW-1, tendered here affidavit Ex.RA and in support of her case, produced PW-2 Kiranjit Kaur, a co-employee, who tendered her affidavit Ex.RB.

The witnesses produced by the parties were duly cross-examined. After considering the evidence, the trial court dismissed the petition by holding that the appellant has failed to prove his pleas of cruelty or desertion. The trial court held that in the absence of any specific allegation of cruelty whether physical or mental, the issue regarding cruelty has not been proved. As regards the plea of desertion based upon the alleged failure of the respondent-wife to cohabit with the appellant-husband, the trial court recorded a finding that though parties were posted at different places, they live together upto the year 2007. The trial court also noticed that both the appellant and the respondent are government employees posted at Amritsar and Barnala respectively. The appellant had one time got himself transferred to Patiala but thereafter at his own request, got re-transferred to Amritsar. The trial court also noticed that the

respondent-wife while appearing in the witness box, had deposed on oath that now she is ready to resume cohabitation as and when the appellant so desires and is even ready to get herself posted at Amritsar in case any vacant post is available.

Counsel for the appellant submits that parties have been living separately for the last more than fifteen years. A perusal of the evidence on record proves that the respondent-wife got herself transferred to Barnala so as to reside with her parents. The appellant made every attempt to save the marriage by even getting himself posted to Rajendra Hospital, Patiala. The respondent-wife, however, was insistent that the appellant live with her parents at Barnala. The appellant when faced with extreme harassment, was compelled to seek his re-transfer to Amritsar. The letter of transfer addressed by the appellant proves the fact that the respondent did not want to live with him but wanted them to live with her parents. The appellant has been denied access to his daughter and as the respondent treated the appellant and his parents with cruelty, the trial court has erred in dismissing the petition. Counsel for the appellant further submits that the fact that parties have been residing separately for the last fifteen years, raises an inference that the respondent does not intend to resume matrimony but the trial court has by referring to irrelevant factors, recorded a finding that there is no evidence that the respondent intended to bring matrimony to an end. The very fact that the appellant got himself transferred to Patiala, proves that the

appellant made every attempt to save the marriage. The conduct of the respondent, however, compelled the appellant to get himself re-transferred to Amritsar. The statement made by the respondent-wife that she is ready to reside with the appellant and get transferred to Amritsar, is patently false as she never made any application for being transferred to Amritsar.

Counsel for the respondent, on the other hand, submits that the impugned judgment is legal and valid. The appellant has not adduced any evidence to prove his plea of desertion or cruelty. The respondent is a government employee. The exigency of service require her to be posted at a place the government desires. The respondent was initially appointed in government service in January, 1997 at Harpalpur, District Patiala, thereafter transferred to Sangrur and then to Bhawanigarh and after that to Barnala. The respondent is residing in government quarters at Barnala and not with her parents. The appellant got himself posted to Patiala but then abruptly got himself re-transferred to Amritsar. The appellant has been visiting the respondent upto 2007 but then suddenly filed a petition for divorce. The respondent has been attending the marriages in the family of the appellant as well as ceremonies relating to death of his relatives. The appellant is guilty of desertion and, therefore, cannot be allowed to take advantage of his own wrong.

We have heard counsel for the parties, considered the

arguments, appraised the impugned judgment, the pleadings and the evidence on record.

The appellant, as already noticed, prays for grant of a decree of divorce on the twin grounds of cruelty and desertion. The plea of cruelty based upon averments in the petition and deposition by the appellant as PW-1 and his witnesses PW-2, his mother, PW-3 and PW-4 his uncles, is devoid of any particulars of the acts of cruelty whether physical or mental. The allegations regarding cruelty are general in nature namely that the respondent-wife did not respect her mother-in-law etc. but without reference to any specific incident of disrespect or misbehaviour. This apart, as recorded by the trial court, PW-2, the mother-in-law of the respondent, had deposed that she was residing in her native village when the parties were living together at Amritsar, thereby admitting that the parties did not reside with the mother-in-law for any such period of time so as to lend credence to the general allegation of misconduct with the mother-in-law. The finding recorded by the trial court that the appellant has not been able to prove his allegation of cruelty, is thus, affirmed.

As regards the plea of desertion, the appellant and the respondent were married in 1994. At that time, the appellant was working as an operation theatre assistant in a government hospital at Amritsar whereas the respondent was working as a staff nurse in DMC, Hospital, Ludhiana. The respondent eventually resigned her

job or her contract came to an end and she began residing with the appellant in government quarters at Amritsar where a female child was born. The respondent, thereafter, was selected for a government job in 1997 and posted at village Harpalpur, District Patiala. She was thereafter posted to Sangrur, then to Bhawanigarh and then to Barnala. The appellant, who works as an operation theatre assistant, could only be posted at a hospital in a district and, therefore, got himself transferred to Rajendra Hospital, Patiala in 1997 but then made an application on 17.04.1998, seeking re-transfer to Amritsar. The letter Ex.P1, has been produced on record by the appellant in support of his allegation that it is the respondent who did not want to live with him. A perusal of the letter does not indicate any misconduct on the part of the respondent or any such desire to bring the matrimonial relationship to an end much less any such fact that would enable us to accept the appellant's plea that the respondent intended to bring matrimony to an end. The respondent is a working woman, posted in a government hospital. The posting of an employee is an exigency of service and not a matter of choice. The appellant, it appears, got himself transferred to Patiala so that parties could be near to each other and then abruptly got himself retransferred to Amritsar and began insisting that the respondent should leave Barnala and live with him at Amritsar. The respondent, on the other hand, when she stepped into the witness box, has clearly deposed that she is ready to join the appellant at Amritsar in case a

vacant post is available, indicating that it is the appellant who is bent upon bringing the matrimonial relationship to an end. The conduct of the respondent-wife cannot be faulted. The husband does not have a right to insist that the wife reside at a place of his choice particularly when the wife is working. It would be appropriate to point out that even PW-2 (mother of the appellant) has admitted that the parties were living together or meeting each other upto 2007, thereby proving the falsity of the appellant's case that the respondent deserted him in 1997. A perusal of the cross-examination of the appellant reveals that the respondent-wife has been attending marriages and bhog ceremonies of the relatives of the appellant and even the inauguration of the newly built house of the appellant's brother in 2005. The allegation that the respondent only wanted to reside with her parents at Barnala, is falsified by the fact that the respondent is residing in government accommodation and not in the house of her parents. The fact that the parties are residing separately since long, does not raise an inference of desertion particularly when it is the appellant-husband who is guilty of seeking retransfer from Patiala. We are, thus satisfied that the trial court has rightly held on the basis of pleadings and the evidence on record that the appellant has not been able to prove his plea of desertion much less is there any evidence on record that would enable us to hold that the trial court has recorded a finding that is contrary to the pleadings and the evidence.

Consequently, finding no merit, the appeal is dismissed
but with no order as to costs.

[RAJIVE BHALLA]
JUDGE

28th November, 2015
shamsher

[REKHA MITTAL]
JUDGE