

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

FAO No.65 of 2010

Date of Decision:26.8.2015

Randhir Singh

.....Appellant

Vs.

Sonia

.....Respondent

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

Present:- Ms. Puja Chopra, Advocate for the appellant.

Mr. Vijay Sharma, Advocate for the respondent.

Navita Singh, J.

The appellant- Randhir Singh preferred this appeal against the judgment and decree dated 1.12.2009 passed by the Additional District Judge (Fast Track Court), Patiala whereby the petition filed by the appellant under Section 13 of the Hindu Marriage Act was dismissed.

The allegations made by the appellant against the respondent in the petition were that soon after the marriage, which took place on 21.10.2003, the respondent had started creating trouble in the family. She insisted that the appellant should live separately from his parents and should shift with her to Patiala and also get his share in the property from his parents. A male child was born to the parties on 26.9.2004 but the attitude of the respondent did not change. She was in the habit of insulting the appellant and his family members and picking up quarrel on trifles. The appellant tolerated the conduct of the respondent hoping that better sense would prevail on her. He requested her to get herself transferred from Patiala to Samrala but she refused. She used to even physically beat him

and his mother.

Earlier the respondent was married to one Barinder Singh son of Jagjit Singh and the marriage was dissolved by a decree of divorce but the fact was not disclosed to the appellant before marriage. He was shocked when he learnt about that. The respondent despite holding of Panchayats, failed to join company of the appellant.

The respondent, admitting the marriage and the birth of the child, denied the allegations in the petition and rather alleged that her mother-in-law Darshan Kaur was a quarrelsome and greedy lady and she was not living with her husband. The person who, at the time of marriage, performed Milni with the father of the respondent was not actually the father of the appellant. A demand of Rs.10 lac was made from the respondent because her mother had retired from service and got retiral benefits. The respondent was also beaten up by her husband's brother Amrik Singh. Despite the fact that the appellant was a good husband, he sided with his brother at that time and also would get carried away whenever his mother instigated him against the respondent. The appellant had disclosed to the respondent that he did not like his mother's sister's husband Gurdev Singh visiting their house but he was so much under pressure from his mother that he could not ban the entry of said Gurdev Singh.

It was pleaded that the appellant had not asked the respondent to get herself transferred to Samrala. Rather he agreed to get himself transferred to Patiala as the parties wanted to purchase property over there.

The appellant examined Ravinder Kumar, Baljit Singh and

Darshan Kaur as PW1, PW3 and PW4 respectively while he deposed as his own witness as PW2. On the other hand, the respondent examined Sukhwinder Singh Bahia as RW1, appeared herself as RW2 and examined Parkash Singh, Sukhdev Singh, Gurpreet Singh and Dr. Inderjit Singh as RW3 to RW6 respectively.

Counsel on either side has been heard by us and the record has been perused.

It may be mentioned at the outset that counsel for the appellant did not press the allegations in the petition regarding concealment of the first marriage of the respondent with Barinder Singh son of Jagjit Singh. That point, therefore, need not be touched while deciding the appeal.

The trial Court, on scrutiny of evidence, came to the conclusion that the respondent did not extend any cruelty to the appellant and she had always been ready and willing to live with him. The appellant had failed to show that he had been deserted by the respondent, much less for any sufficient cause. Rather the view of the Court was that it was the appellant who was cruel towards the respondent.

Counsel for the appellant argued that serious allegation was levelled by the respondent against the mother of the appellant which he was not able to take and that the allegation in itself was sufficient to constitute cruelty. Though the appellant had not taken any such plea in the petition that the respondent levelled any allegation against his mother, yet if any scandalous allegation is made in the written statement and something is said which is not later on proved, it can be taken to be cruelty towards the other spouse. For reasons being recorded herein below, it is found that whatever

the appellant alleged in his pleadings and what the respondent stated in her reply to the petition about his mother was not sufficient to constitute cruelty enough to grant a decree in favour of the appellant.

A lot of stress was laid by counsel for the appellant on the fact that initially when the reply to the petition was filed, no allegation was made against the mother of the appellant but for putting in the allegation, the reply/ written statement was amended. Be that as it may, the fact is that the respondent alleged in her written statement that the appellant had disclosed to her that he did not like his uncle Gurdev Singh but was helpless and could not refuse entry to him because of the pressure from his mother. Some person other than the father of Randhir Singh performed Milni at the time of marriage with the father of the respondent and she came to know that actually Sewa Singh father of the appellant was second husband of his mother and for the last 20 years, they were living separately. Whatever was stated by the respondent in the written statement to that effect, cannot be said to be such scandalous allegation or accusation as would fall within the ambit of cruelty grave enough to dissolve the marriage between the parties.

It was not alleged by the respondent that the mother of the appellant was living in adultery with Gurdev Singh or with anyone else for that matter. Gurdev Singh was a close relative of the appellant and there can be so many reasons for which he may not have liked him and did not want him to come to his house. If the mother of the appellant wanted her sister's husband to visit them, it would not mean that something was going on between said Gurdev Singh and mother of the appellant. The respondent rather herself pleaded that the appellant was a good man and a good

husband but was under the influence of his mother.

In any case, since the appellant moved the Court seeking a decree of divorce, the onus lay on him to prove that the respondent had treated him with cruelty and had deserted him without reasonable cause. The bare allegations in the petition show that none of the two aspects was properly pleaded, much less proved. Whatever was alleged in the petition could be termed as the normal wear and tear of any marriage and there was no such serious allegation of cruelty as would entitle the appellant to divorce.

When the appellant stepped in the witness box, he produced his affidavit by way of examination-in-chief which was merely reproduction of the petition, as is usually done in most of the cases. In his cross-examination, he admitted that he had not mentioned in his petition that the respondent had been residing with her parents since December, 2003. No date or even year of desertion was given in the petition. Rather it was not even pleaded in so many words that the respondent had left the matrimonial home and had deserted the appellant. It was simply said that in spite of all efforts made by the appellant, his parents and the members of the Panchayat, the respondent failed to settle and live with the appellant and, therefore, deserted him. The pleadings were wanting in material information relating to desertion, if any, and therefore, that ground was not available to the appellant for divorce at all.

He also admitted in the cross-examination that he had not given any particular instances of cruelty in his petition and in his examination-in-chief. The major part of his cross-examination was on irrelevant points and

need not be referred to. It is sufficient for the purposes of adjudicating upon the present controversy that the appellant admitted that he had not pleaded desertion and cruelty in any specific manner and that he could not give any instances of cruelty or any sufficient cause for desertion if at all.

In view of the statement made by the appellant himself, other evidence would practically be meaningless. Even otherwise, Baljit Singh PW3 stated that he was known to the parties but nothing was mentioned as to what kind of relation he had with the appellant and his family and how frequently he used to visit them so that any kind of cruelty on the part of the respondent would be in his personal knowledge. His affidavit was framed by choosing the relevant portions from the petition regarding facts which could be the knowledge of someone other than the appellant himself. In the cross-examination, he admitted that he had no knowledge as to what was written in his affidavit and he did not even know the name of the mother or father of the appellant. It is, therefore, clear that he had no such relationship with the appellant and his family so as to be aware about the personal differences between the parties. The mother of the appellant who appeared as PW4 was obviously an interested witness and deposed in favour of her son. Questions were put to her in the cross-examination regarding her first marriage with Sewa Singh and regarding Gurdev Singh being her sister's husband but her reply was in the negative. In any case, it would be immaterial for the instant case as to whether mother of the appellant was married twice or not and whether Gurdev Singh was or was not related to her as alleged by the respondent.

Since there was no admission by the respondent or any of the

witnesses regarding the averments made by the appellant, even if the evidence led by the respondent is ignored, the appellant must fail because he was required to prove his case. It may be mentioned at the cost of repetition that the very allegations in the petition did not make out any cruelty in the eyes of law for ending the marriage between the parties nor desertion was even properly pleaded. The evidence led by the appellant, as discussed above, would, therefore, be of no avail. Neither he could prove cruelty or desertion nor the allegation against his mother by the respondent tantamounted to cruelty. It may, however, be pertinent to mention here that despite the specific averments in the written statement, neither the appellant nor his mother made even a whisper about the same in their deposition for negating it. They did not bother to state in their examination-in-chief that whatever was stated regarding mother of the appellant in the written statement was absolutely incorrect and far from true. The point need not be stretched any further and it has no direct bearing on the merits of the case.

Since the grounds taken for divorce were neither happily pleaded nor properly proved, it can be said that the appellant failed to make out any case for grant of decree of divorce in his favour. The judgment and decree under challenge do not call for any interference. The appeal is dismissed.

(NAVITA SINGH)
JUDGE

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(RAJIVE BHALLA)
JUDGE