

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 179 of 2015 (O&M)

Date of Decision: 12.1.2015

Brijesh Kumar

....Appellant.

Versus

Smt. Seema

...Respondent.

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

PRESENT: Mr. Anirudh Kush, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the husband against the judgment and decree dated 18.12.2014 passed by the District Judge, Family Court, Sonipat, whereby the petition filed by the respondent-wife under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (in short “the Act”) for dissolution of marriage by a decree of divorce, was allowed.

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 1.7.2008 in accordance with Hindu rites and ceremonies at village Farmana, District Sonipat. The marriage was solemnized with a great pomp and show and a lot of dowry articles were given. The marriage was consummated and out of the wedlock, a daughter, namely, Khushi was born on 3.2.2010. With the lapse of time, the behaviour of the appellant and his family members became quite abnormal towards the respondent and they started taunting her without any reason as and when any member of her

parental family came to her matrimonial home to give some gifts on the occasion of festivals. The appellant and his family members were not happy with the dowry articles given to her in her marriage and they demanded a motorcycle and cash of ₹ 3,00,000/-. However, a sum of ₹ 2,85,000/- was given to them in the first week of April, 2009. It was assured by the appellant and his family members that they will utilize the said amount for construction of the house on a plot of 100 square yards situated in Arya Nagar, Sonipat. In July, 2009, the parties shifted in the newly built house and after shifting to the said new house, the appellant started drinking and giving beatings to the respondent without any reason. The respondent was turned out of her matrimonial home in the first week of November, 2009, when she was pregnant, after giving her merciless beatings. She gave birth to a daughter on 3.2.2010 in PGIMS, Rohtak but none came from the side of the appellant to see the daughter despite several messages. Ultimately, on 1.4.2010, a panchayat was convened in village Rohtak wherein the appellant and his family members assured to keep the respondent properly and she was brought back to her matrimonial home on 2.4.2010. However, she was again turned out of her matrimonial home on 3.9.2010 after giving her merciless beatings. Thereafter, the respondent filed a petition under Section 9 of the Act for restitution of conjugal rights which was got dismissed as withdrawn on 4.11.2010 on the assurance of the appellant to keep her properly. The respondent again joined the company of the appellant and after 10/15 days, the behaviour of the appellant became intolerable as he started giving merciless beatings to the respondent. Then, the respondent was again turned out of the matrimonial home on 8.10.2011 along with her minor daughter and since then she had been

residing at her parental home. On 16.2.2012, the appellant along with his father came to the parental house of the respondent and took his daughter Khushi in his lap and started showing his endless love and affection for her and then they slipped away along with the minor daughter. Accordingly, the respondent filed a petition under Section 13 (1)(ia) of the Act for dissolution of marriage by a decree of divorce on the ground of cruelty. The said petition was contested by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that it was a simple marriage and no dowry was given by the parents of the respondent and no demand of dowry was ever raised by the appellant and his family members. It was further pleaded that the house was constructed by the father of the appellant from his own funds and no money was contributed by the parental family of the respondent. Further, the appellant had borne all the expenses of the birth of the daughter in PGIMS, Rohtak. According to the appellant, the respondent had left her daughter at his house and taken away all ornaments and valuable clothes behind the back of the appellant. She had left his company without any rhyme or reason. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner is entitled to a decree of dissolution of marriage on the grounds mentioned in the petition? OPP
2. Relief.
3. To prove the averments made in the petition, the respondent herself appeared as PW1 and examined Dilawar as PW2, Asha Taneja

as PW3. On the other hand, the appellant examined himself as RW1, Rajender Singh as RW2 and Balwan Singh as RW3.

4. The trial court on appreciation of evidence led by the parties decided issue No.1 against the appellant holding that the respondent was entitled to dissolution of her marriage as she was treated with cruelty, mental as well as physical by the appellant. Accordingly, the trial court vide judgment and decree dated 18.12.2014 allowed the divorce petition and dissolved the marriage between the parties by passing a decree of divorce on the ground of cruelty. Hence, the present appeal.

5. Learned counsel for the appellant submitted that no demand of dowry was ever raised by the appellant and his family members and all the allegations in this regard were false. It was urged that the respondent left the matrimonial home on her own and there was no ground to prove cruelty.

6. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

7. The Apex Court in **Vinita Saxena v. Pankaj Pandi, (2006) 3 SCC 778** while examining legal proposition on the aspect of cruelty had observed as under:-

“It is settled by catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the Section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment

of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

The word 'cruelty' has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

8. Examining the factual scenario herein, it may be noticed that the appellant-husband had turned out the respondent-wife from the matrimonial home many a times and she had to be rehabilitated with the intervention of the respectables. Further, there is nothing on record to show as to why the respondent would leave her matrimonial home unless she had compelling reasons. The appellant had not been giving money to the respondent-wife for household expenses and she had to take money from her father to meet the daily requirements of life. The respondent-wife was being given physical beatings as well. The conduct

of the appellant had resulted in deterioration of the marital relationship to such an extent that the appellant-husband is not entitled to seek court help to have the company of the respondent-wife. In fact there was lot of mental agony, torture and distress to the respondent-wife. The only conclusion on the appreciation of evidence is that the respondent was treated with cruelty. The relevant findings recorded by the trial court are as under:-

“9. After giving my thoughtful consideration to the rival contentions and appreciating the evidence adduced in the case, I am of the considered opinion that the petitioner has proved that she has been treated with cruelty. The marriage between the parties was solemnized way back on 1.7.2008 and a daughter was also born out of this wedlock, who is presently living with the respondent, her father. According to the deposition of the petitioner and her father, she was turned out of her matrimonial home many a times and she was rehabilitated due to intervention of the respectables. Even the respondent had filed a petition under Section 9 of the Hindu Marriage Act, 1955, and in that petition, consequent upon a compromise, the present petitioner went to her matrimonial home and the said petition was dismissed as withdrawn. Even thereafter, same behaviour of the respondent continued and the petitioner was constrained to leave her matrimonial home and she was, in fact, turned out after giving a beating. The

petitioner is a housewife and she has no source of income and she is dependent on her parental family. There is nothing to show as to why, the petitioner would leave her matrimonial home unless she had compelling reasons. The inclination of the petitioner to live with the respondent is writ large from the fact that she did not launch any criminal proceedings against the respondent for demand of dowry etc. There is cogent evidence led by the petitioner to the effect that the respondent is addicted to excess liquor and he often gave her a beating and he also did not give money for household expenses. No doubt, money allegedly taken for construction of the house does not amount to demand of dowry but there is cogent evidence led by the petitioner to the effect that she was often given a beating by the respondent under the influence of liquor and he is also addicted to it. The petitioner was also not given money for household expenses and she had to make her both ends meet after fetching money from her father. This, to my mind, amounts to mental as well as physical cruelty to the wife. The contention that father of the petitioner is the root cause of disturbance between the parties, is not tenable because no father can opt to keep his married daughter with him more so when, he is leading a retired life. Thus, the petitioner has proved that the respondent had created such an

atmosphere in his house that it had become impossible for the petitioner to live with him. Therefore, conscience of the Court is satisfied that the relationship between the parties has deteriorated to such an extent due to conduct of the respondent that it would be impossible for them to live together without mental agony, torture and distress. Therefore, in this view of the matter, the various contentions raised by the learned counsel for the respondent do not merit consideration and the same are repelled and the authorities relied upon by him are also distinguishable on peculiar facts of this case.

10. As a sequel to what has been discussed above, it is held that the petitioner has proved that she has been treated with cruelty, mental as well as physical, by the respondent and, thus, she is entitled to dissolution of her marriage on this ground.”

9. In view of the above and the findings recorded by the trial court which could not be demonstrated to be erroneous or perverse in any manner, no interference is called for by this Court. Accordingly, the judgment and decree dated 18.12.2014 passed by the trial court allowing the divorce petition is upheld and the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 12, 2015
gbs

(SNEH PRASHAR)
JUDGE