

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.5096 of 2013

DATE OF DECISION: APRIL 7, 2015

PRIYANKA

...APPELLANT

VERSUS

MANJEET

...RESPONDENT

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

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

PRESENT: MR. SUMIT SANGWAN, ADVOCATE FOR THE APPELLANT.
RESPONDENT PROCEEDED EX-PARTE (17.2.2014).

M. JEYAPPAUL, J.

1. Aggrieved by the dismissal of the petition filed under Section 13(1)(b) of the Hindu Marriage Act, 1955, seeking dissolution of marriage by a decree of divorce, the wife Priyanka has come forward with the present appeal.

2. Petitioner-wife filed a petition for dissolution of marriage on the sole ground of desertion. The petitioner married the respondent-husband on 27.4.2008. It was contended by the petitioner that she was a minor at the time when the marriage was performed. She visited her in-laws house alongwith the respondent-husband only for one night and thereafter came back to her parental house on 29.4.2008. It has been alleged by the petitioner that the respondent-husband and his family members being not satisfied with the dowry given at the time of marriage, taunted her when she reached her matrimonial home. It is alleged that the respondent never visited

her parental home to take her back. The petitioner has since attained majority and is willing to reconstitute the relation with the respondent. The respondent filed a petition under Section 9 of the Hindu Marriage Act and the same was dismissed as withdrawn on 21.7.2011. The respondent deserted the petitioner since 29.4.2008, without any reasonable cause and excuse.

3. The respondent contended in his written statement that the date of birth of petitioner was not disclosed before the marriage. The petitioner herself refused to reconstitute the relation with him. The father of the petitioner had not made any efforts. In fact, the petitioner lived for one night in her matrimonial home. The next day, she proceeded to her parental home and never came back to accompany the respondent. The respondent waited for about 3 months for the arrival of the petitioner to the matrimonial home and thereafter proceeded to the parental home of his wife, but she refused to accompany him. Several efforts made by him to reconstitute the relation proved futile.

4. The trial Court having adverted to the evidence of the petitioner who was examined as PW1, her mother Roshni as PW2 and the documents Ex.PW1/A, Ex.PW2/A and Mark 'A' adduced on the side of the petitioner and RW1 who is the husband and RW2, Rajinder, father of RW1, came to the conclusion that the petitioner failed to establish that the respondent deserted the petitioner without sufficient cause. Ultimately, the trial Court dismissed the plea for dissolution of marriage on the ground of desertion as pleaded by the petitioner.

5. It was contended on the side of the appellant that she was a minor at the time of marriage. On the contrary, it was the plea of the respondent-husband that the age of the petitioner was not informed to him.

6. Firstly, we find that the petition was not filed by the appellant with a prayer for annulment of the marriage by invoking the provisions under Section 11 of the Hindu Marriage Act, 1955. Secondly, there is no documentary proof to establish that the appellant was a minor at the time when her marriage was solemnized. Therefore, in our view, the plea of the appellant that she was a minor at the time of marriage does not have a material bearing on this case.

7. Let us now take up the ground of desertion set up by the appellant. It is her admitted case that she stayed with the respondent-husband in the matrimonial home only on 28.4.2008 after the marriage that was held on 27.4.2008 and thereafter she came back to her parental home on 29.4.2008 itself. Nothing was pleaded that on account of cruelty committed by the husband, she had to leave the matrimonial home. In other words, no sufficient cause was pleaded even in the petition for her departure from the matrimonial home.

8. Learned counsel appearing for the appellant would submit that the trial Court totally ignored the evidence adduced through PW1 and PW2 that consummation was deferred till muklawā ceremony, as the appellant was a minor at the time of marriage. As already observed by us, there is no material to establish except the oral assertion of PW1 and PW2 that the appellant was a minor at the time when the marriage took place. Secondly,

there is no evidence on record to show that the date for muklawā ceremony was fixed and the respondent failed to take back the appellant to matrimonial home after muklawā ceremony was over. The evidence on record would disclose that there is no muklawā ceremony at all performed, even assuming for the sake of arguments that the appellant was a minor at the time of marriage.

9. The trial Court has rightly noted that not even a suggestion was made to RW1 and RW2 that they did not take any steps to take back the appellant to the matrimonial home. In other words, their testimony that they took efforts to get back the appellant to matrimonial home failed, but the father of the appellant informed them that the appellant was unwilling to join the respondent stood not challenged by the appellant.

10. The appellant has categorically deposed before the trial Court that she had no inclination to live with the respondent-husband.

11. Firstly, we find that the appellant had walked out of the matrimonial home on her own volition. No sufficient cause for such a departure from the matrimonial home was adduced before the trial Court. Further, the evidence adduced by the respondent that they took efforts to get back the appellant to matrimonial home was not at all put to challenge. For all these reasons, we find that the appellant has not made out a case for dissolution of marriage on the ground of desertion.

12. It was vehemently submitted by learned counsel appearing for the appellant that this Court by virtue of its order dated 20.11.2014 directed the respondent-husband to pay maintenance *pendente lite* at ₹3000/- per

month from the date of application and litigation expenses of ₹11,000/-.

But the respondent failed to pay the said amount. Therefore, the defence of the respondent will have to be struck-off and the appeal will have to be allowed, it was contended.

13. In *Usha Rani vs. Prem Singh, 2005(2) RCR (Civil) 248*, this Court made an observation that failure on the part of the husband to pay maintenance *pendente lite* and litigation expenses to the appellant as directed by the Court shall lead to striking off the defence of the husband and as a consequence, the appeal filed by the wife is to be allowed on that ground alone.

14. Of course, the respondent-husband who was directed to pay maintenance *pendente lite*, cannot be permitted to canvass his defence in the appeal. Resultantly, the appeal preferred by the wife will have to be accepted.

15. On a careful perusal of the entire records in the instant case, we find that this Court ordered notice in the application filed by the wife under Section 24 of the Hindu Marriage Act, 1955, while ordering notice of motion in the main appeal preferred by her. Though CMM No.162 of 2013 filed by the wife praying for maintenance *pendente lite* under Section 24 of the Hindu Marriage Act, 1955 was referred in the previous notice which returned unanswered, we find that the last notice sent to the appellant did not specifically refer to CMM No.162 of 2013. In other words, a typed-set of papers filed alongwith the notice issued in CMM No.162 of 2013 had not been annexed alongwith the notice. The respondent had chosen to refuse to

receive the notice only in the main appeal.

16. It may be a case where the respondent would have preferred not to contest the appeal preferred by the wife, but to contest the application filed under Section 24 of the Hindu Marriage Act, 1955. Inasmuch as no notice in CMM No.162 of 2013 was served on the respondent or was refused to be accepted by the respondent, the order passed by this Court in absentia of the respondent on 20.11.2014 would not operate against the interest of the respondent.

17. In the above special circumstances, we are of the view that the above ratio laid down by this Court cannot be applied to the facts and circumstances of this case.

18. In the result, the appeal fails and it stands dismissed. There is no order as to costs.

(M. JEYAPPAUL)
JUDGE

April 7, 2015
Gulati

(RAJ RAHUL GARG)
JUDGE