

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

**CMM No.63 of 2014 and
FAO-M-233-2013 (O&M)
Date of decision: 12-01-2015**

Rajwinder Kaur @Jaswinder Kaur

.....Appellant

Vs.

Preet Singh

.....Respondent

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

Present: Mr. Satbir Rathore, Advocate for the appellant-wife.
Mr. P.S.Punia, 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 14.5.2013 passed by the trial court, whereby the petition filed by her under section 13 of the Hindu Marriage Act, 1955 (in short, “the Act”) for dissolution of marriage on the grounds of cruelty and desertion has been dismissed.

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 24.2.2008 at Village Chak Kalal, District SBS Nagar, according to Sikh religious rites. After the marriage, the parties lived together and cohabited as husband and wife at Village Bhairn Munna, Tehsil

and District Ludhiana and out of the wedlock, one daughter namely Manjot Kaur was born. The parents of the appellant spent a sum of ₹ 3 lacs on marriage and gave dowry articles to the respondent and his family members. From the very beginning, the behaviour of the respondent and his parents was very cruel and rude towards the appellant. The respondent used to state that the appellant was not good looking. It was also alleged that she had not brought sufficient dowry. The respondent was badly addicted to drugs and intoxicants and used to beat her in order to fulfil his lust for drinking. He demanded ₹1 lac from the appellant. In the second week of July 2008, the respondent and his family members gave severe beatings to the appellant and threw her out of her matrimonial home and asked her to come back only with cash amount of ₹ 1 lac from her parents and since then she is residing in her parental house. She was blessed with a daughter on 21.11.2008 but none from respondent family had come to see her. Panchayat was conveyed. The respondent and his family members were requested to rehabilitate the appellant but they flatly refused. Hence the appellant filed petition under section 13 of the Act for dissolution of marriage on the grounds mentioned above. Upon notice, the respondent husband appeared and filed written statement controverting the averments made in the petition. It was inter alia stated that nothing was given in marriage except the ceremonial gifts. The allegation regarding harassment of the appellant by the respondent was denied. The demand of money was also denied. It was further stated that when the appellant left the matrimonial house, the respondent had filed petition under Section 9 of the Act but the appellant refused to resume cohabitation. The trial court after examining the entire evidence on record

dismissed the petition under section 13 of the Act filed by the appellant wife vide judgment and decree dated 14.5.2013 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 respondent has treated the petitioner with cruelty?OPP.

2.Whether the respondent has deserted the petitioner without any sufficient cause for a continuous period of two years immediately before filing the present petition? OPP

3.Relief.”

In order to prove her case, the appellant wife appeared as PW1 and examined PW2, Atam Parkash, her father, PW3, Amarjit Sarpanch of Village Chak Kalal. On the other hand, the respondent appeared himself as RW1 and closed his evidence. In her statement as PW1, the appellant wife deposed that her parents spent a huge amount on the marriage but despite that, she was being harassed for bringing less dowry. The respondent used to say that she was not beautiful and good looking. He was addicted to drugs and demanded money from her. When she did not bring the amount, she was thrown out of the matrimonial home in July 2008. She gave birth to a female child on 21.11.2008 but no body from the family of the respondent came to see her. Panchayat was conveyed but the respondent refused to rehabilitate her. Her statement was corroborated by her father Atam Parkash appearing

as PW2 and Amarjit PW3, Sarpanch of the Village. On the other hand, the respondent denied the allegations levelled by the appellant. The demand of money was also denied. Rather the respondent stated that he had filed a petition for restitution of conjugal rights but the appellant refused to accompany him. The trial court after considering the entire evidence on record dismissed the petition holding that the respondent had not treated the appellant with cruelty and rather the appellant had withdrawn herself from the society of the respondent. Under issue No.1, in para 8, the trial court has recorded as under:-

“8. To prove that the respondent has treated the petitioner with cruelty, there is statement of the petitioner, who appeared as PW1 and she has stated that at the time of marriage, the parents of the petitioner had spent a sum of ₹ 3,00,000/- on her marriage, but despite that she was being accused for bringing less dowry. The respondent was saying that she was not beautiful and good looking. He was addicted to drugs and demanding a sum of ₹ 1,00,000/- and ultimately, she was sacked from the matrimonial house in July 2008. She gave birth to a female child on 21.11.2008 but neither the respondent nor any of his family members came to see the petitioner. The panchayat was convened, but the respondent refused to rehabilitate the respondent. Therefore, she has been treated with cruelty. On the same lines is the statement of her father Atam Parkash and PW3 Amarjit, who is Sarpanch of the Village.”

5. After perusing the findings recorded by the trial court and the evidence available on record we find that the trial court has erred in appreciating the evidence on record. In her statement as PW1, the appellant deposed that her parents had spent a sum of ₹ 3 lacs on the marriage. In spite of that, she was being harassed for bringing insufficient dowry. She was

being taunted by the respondent that she was not beautiful and good looking. She further stated that the respondent was addicted to drugs and drinking. He used to beat her for not bringing money from her parents. She was thrown out of the matrimonial home in July 2008. When she gave birth to a female child, no body from the family of the respondent came to see her. Even when panchayat was called, the respondent and his family members did not make any effort to rehabilitate her. The version given by the appellant was corroborated by her father Atam Parkash appearing as PW2 and Sarpanch of the Village Amarjit as PW3. No material or medical evidence was produced on record to prove that the respondent was not addicted to drugs. The trial court was thus in error in deciding Issue No.1 relating to cruelty against the appellant-wife.

6. Equally, the finding of the trial court on the question of desertion covered under Issue No.2 is legally unsustainable. The appellant-wife gave birth to a baby girl on 21.11.2008 and was then thrown out of her matrimonial home. It is her categoric case in the petition and also in the evidence that thereafter she had been residing separately and the respondent-husband had intentionally and willfully deserted her without any reasonable and probable cause. It is admitted fact that the divorce petition was filed on 27.1.2012. The finding of the trial court in para 14 of the judgment while adjudicating Issue No.2 regarding desertion that in November 2011, the appellant-wife gave birth to a female child is contrary to pleading and evidence and is the result of misreading and mis-appreciation of evidence on record. Period of more than two years as statutorily required under Section 13(1)(ib) of the Act having expired from

the date of desertion in November 2008 till January 2012 when the divorce petition was filed and there being sufficient ground for the appellant-wife to leave the matrimonial home in 2008, the finding on Issue No.2 is liable to be reversed and is so accordingly set aside.

7. The appellant has also filed an application (CMM No.63 of 2014) under section 24 of the Act for grant of maintenance pendente lite and litigation expenses during the pendency of the appeal in this Court, inter alia on the ground that she has no source of income or any moveable or immovable property in her name. In addition to herself, she has to maintain her five years old daughter who is studying in Nursery Class. She is fully dependent upon her parents. On the other hand, the respondent husband is working as building contractor. He has also four buffaloes and is earning about ₹ 25,000/- per month. The trial court had granted maintenance pendente lite at the rate of ₹ 3000/- per month to the appellant wife and her daughter besides ₹ 3000/- as litigation expenses. It has also been stated that the amount of maintenance has not been paid by the respondent. Learned counsel for the appellant placed reliance on judgments of this Court in ***Kuldip Kaur vs. Gian Chand***, 2011(6) RCR (Civil) 101 and ***Mohinder Verma vs. Sapna***, FAO No.7027 of 2014 decided on 29.9.2014 in support of her claim to urge that even the defence of the respondent-husband was liable to be struck off which was erroneously not done. Notice of the application was given to the respondent husband. Reply has been filed controverting the averments made in the application. It has been inter alia stated that the respondent is working as a daily wager with the mason. He is getting very low salary. His old mother is also dependent upon him. On these premises,

prayer for dismissal of the application has been made.

8. Keeping in view the overall facts and circumstances of the case, the financial position of the husband and the status of the appellant wife alongwith her daughter, we think it appropriate to award the amount of ₹ 3000/- per month as maintenance pendente lite. Ordered accordingly. CMM No.63 of 2014 stands disposed of. Needless to say, in view of remedy of execution of decree or order passed by the matrimonial court being available under Section 28A of the Act, the appellant-wife shall be entitled to recover the aforesaid amount of maintenance pendente lite through execution proceedings.

9. In view of the above, the findings recorded by the trial court cannot be sustained. Consequently, the judgment and decree dated 14.5.2013 passed by the trial court is set aside. The appellant is granted decree of divorce. The appeal stands allowed.

(Ajay Kumar Mittal)
Judge

January 12, 2015
'gs'

(Sneh Prashar)
Judge