

IN THE PUNJAB & HARYANA HIGH COURT AT
CHANDIGARH

FAO-M-241-2013

Date of decision : 29.10.2015

Krishan

... Appellant

Versus

Anita

... Respondent

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

Present: Mr.Surender Lamba, Advocate
for the appellant.

None for the respondent.

REKHA MITTAL, J.

The present appeal lays challenge to the judgment and decree dated 03.07.2013 passed by the Additional District Judge, Narnaul whereby the petition filed by the appellant under Section 13 of the Hindu Marriage Act 1955 (for brevity 'HMA') seeking dissolution of marriage of the parties has been dismissed.

The marriage of the parties was solemnised in the year 1986 as per Hindu Rites when the appellant was six years old. After attaining the age of majority, the marriage was consummated. The appellant has prayed for a decree of divorce on twin grounds i.e. the

respondent is guilty of treating him with cruelty and has withdrawn from his society since 13.09.2002 and refused to resume cohabitation despite efforts by the appellant. The respondent (wife) has been accused of cruelty inter alia on the allegations that she never obeyed commands of the husband in regard to cooking of food and making tea etc. and abused the appellant in presence of guests. She never gave respect to the appellant and his family members. On 13.09.2002, she left the matrimonial home without consent of the appellant and is residing with her parents. A false case under Sections 498-A, 406 of the Indian Penal Code (in short 'IPC') was registered in Police Station Buhana against the appellant and his family members.

The respondent filed the reply and denied the allegations on the basis whereof a decree for divorce has been sought by the appellant (husband). It is pleaded that her behaviour towards the appellant was always very good. She was given beatings and thrown out of the matrimonial house. The appellant kept the entire *istridhan* of the respondent with him, therefore, criminal case under Sections 498-A, 406 IPC has been registered. She is still ready to go to her matrimonial house. The appellant or his family members never came to take her back to the matrimonial home.

The controversy between the parties led to framing of following issues:-

1. *Whether the petitioner-husband is*

entitled for the dissolution of his marriage with the respondent by way of decree of divorce under Section 13 of the HM Act on the grounds as alleged in the divorce petition?OPP

2. *Whether the petition is not maintainable in the present form?OPR*

3. *Whether the petitioner has no cause of action to file the present petition?OPR*

4. *Relief.*

The learned trial Court permitted the parties to lead evidence in support of their respective contentions. The appellant examined himself and Rajbir (his father) PW2. However, the respondent did not adduce any evidence, absented from the proceedings and was proceeded ex-parte on 04.06.2012. She did not appear to contest the proceedings before this Court despite service by way of publication in a newspaper.

Counsel for the appellant has submitted that as the respondent (wife) did not appear in the witness box either to counter the allegations set up in the petition or to substantiate her plea that she was maltreated during her stay in the matrimonial home or articles of her *istridhan* have been misappropriated by the appellant (husband), the learned trial Court committed a gross error in denying the relief when otherwise the stand of the appellant was duly supported by his father and it has been established that the respondent (wife) is guilty of subjecting the appellant to cruelty and deserted him

since September 2002 without any reasonable cause thus depriving the appellant of conjugal bliss. It is further submitted that no effort was made by the respondent or her parental family members for resumption of cohabitation of the parties as husband and wife, sufficient to prove that the respondent is no longer interested in matrimony and marriage of the parties is irretrievably broken down. According to counsel, as the parties are living apart for the past more than 13 years and the respondent absented from the proceedings, no useful purpose would be served by keeping the marriage alive which has virtually lost its life.

We have heard counsel for the appellant, perused the records and find no merit in the appeal.

The marriage of the parties was solemnised in the year 1986 when the appellant was six years old. It is not clear from the record as to when marriage of the parties was consummated after attaining the age of majority. The appellant has raised general and vague allegations to accuse the respondent (wife) of treating him with cruelty. No date, month and year of the alleged cruel treatment of the respondent has been stated in compliance with provisions of Rule 4 (vii) of Punjab and Haryana High Court Rules and Order Volume II, Chapter-I Part-E. Even otherwise, the allegations set out in the petition in respect of misbehaviour of the respondent (wife) do not constitute cruelty to become foundation for a decree of divorce. It is

pertinent to record that to constitute cruelty, the conduct complained of should be "grave and weighty" so as to arrive at the conclusion that the appellant cannot be reasonably expected to live with the respondent. It must be something more serious than "ordinary wear and tear of married life".

The appellant has pleaded that the respondent (wife) lodged FIR No.237 dated 17.09.2002 in Police Station Buhana for offence punishable under Sections 498-A, 406 IPC against the appellant and his family members. The criminal proceedings initiated at the instance of the respondent culminated in the judgment of conviction passed by the Judicial Magistrate Ist Class, Khetri marked as Ex.P3 whereby the appellant, Rajbir his father and Rasoli Devi his mother were held guilty for subjecting respondent to cruelty for bringing insufficient dowry and for misappropriating *istridhan* of the respondent. The learned trial Court has rightly held that the judgment Ex.P3 negates appellant's pleas that the respondent is a guilty spouse or she has deserted him without any sufficient cause. Keeping in view the vague and general allegations levelled by the appellant, the judgment passed by the criminal court in proceedings initiated by the respondent (wife), we are unable to find any error much less illegality in the findings recorded by the learned trial Court rejecting claim of the appellant that the respondent (wife) is either guilty of treating him with cruelty or having deserted him without reasonable cause or

excuse.

This apart, it is pertinent to mention here that the respondent (wife) left the matrimonial home on 13.09.2002. As per plea of the appellant, he along with his father and uncle Shakti Singh went to the house of the respondent for bringing her back on 16.09.2002 but she refused to return. Apart from the fact that conviction of the appellant and his parents in the criminal proceedings is sufficient to counter plea of desertion on the part of the respondent, there is unnecessary and improper delay in instituting the proceedings. The petition for divorce was filed in February 2010 more than approximately 8 years since the wife left the matrimonial home and started residing with her parents. There is no explanation much less satisfactory for this unnecessary and improper delay in instituting the proceedings that the appellant is bound to explain keeping in view the bar created under Section 23(1)(d) of HMA. Analyzed from any angle, we find no error much less illegality in the findings recorded by the learned trial Court.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed with no order as to costs.

(RAJIVE BHALLA)
JUDGE

(REKHA MITTAL)
JUDGE

October 29, 2015.

Davinder Kumar