

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

FAO No.M-253 of 2013

Date of Order: 24.09.2015

Rajwinder Kaur

..Appellant

Versus

Gurpreet Singh

..Respondent

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

Present: Mr. Arvind Kashyap, Advocate,
for the appellant.
Mr. Gurcharan Dass, Advocate and
Mr. Vivek Sharma, Advocate,
for the respondent.

RAJIVE BHALLA, J (Oral)

Prayer in this appeal is to set aside judgment and decree dated 09.07.2013, passed by the Additional District Judge, Fatehgarh Sahib, dismissing a petition for grant of divorce.

Counsel for the appellant submits that even a bare perusal of the pleadings and the evidence reveals that the allegations of cruelty and desertion have been duly proved. The learned trial court, however, did not examine the evidence and the pleadings with any degree of care as it has dismissed the petition in a perfunctory manner. The respondent deserted the appellant in April, 2007 and despite the best efforts of the appellant, rebuffed all attempts to resume matrimony, thereby proving desertion.

Counsel for the respondent vehemently denies the fact that the respondent treated the appellant with cruelty, but states that upon a re-appraisal of the entire matter, the appellant admits the plea

of desertion, but at the same time submits that as the allegation of cruelty has been found to be incorrect, the petition for grant of divorce may be dismissed but in case it has to be allowed, it should only be allowed on the ground of desertion.

We have heard counsel for the parties. A perusal of the pleadings and the evidence reveals that the appellant levelled serious allegation of cruelty and desertion by and at the behest of the respondent. The trial court has dismissed the petition for grant of divorce. Counsel for the respondent has made a statement that the respondent admits the allegations of desertion. In order to rule out the possibility of any collusion between the parties, the respondent was directed to record his statement. The statement made by Gurpreet Singh son of Shri Dalip Singh, the respondent, who is present in Court, reads as follows:-

“STATEMENT OF GURPREET SINGH SON OF SHRI DALIP SINGH, RESIDENT OF VILLAGE BHATTIAN, TEHSIL MALERKOTLA, DISTRICT SANGRUR.

I admit the allegation of desertion levelled in the petition, filed under Section 13 of the Hindu Marriage Act, 1955 and have no objection if the appeal is allowed, judgment and decree passed by the Court below is set aside and the marriage is dissolved by grant of decree of divorce on the ground of desertion only. I, however, deny the allegation of cruelty levelled against me in the petition and in the evidence adduced by the appellant before the trial court. I shall

withdraw any litigation initiated by me and at my behest against Rajwinder Kaur. My affidavit, Mark-'X' in Court today, may be read as a part of my statement. Neither I nor my children shall claim any rights in the property of the appellant.

The appellant, who is also present in Court, was also called upon to make a statement, which reads as follows:-

STATEMENT OF RAJWINDER KAUR WIFE OF GURPREET SINGH DAUGHTER OF SHRI SURJIT SINGH, RESIDENT OF VILLAGE HASSANPUR(CHHALERI KHURD), POLICE STATION MULEPUR, TEHSIL AND DISTRICT FATEHGARH SAHIB.

I have heard the statement made by my husband Gurpreet Singh son of Shri Dalip Singh and withdraw the allegation regarding cruelty. I shall not claim any maintenance or any other rights, like permanent alimony. Karamdeep Kaur, our daughter, shall remain in the custody of the respondent and I shall not file any case for custody of our daughter. I shall withdraw any litigation initiated by me or my family members, but continue to maintain my allegation of desertion.”

Apart from the statements, the parties were called upon to file separate affidavits, in support of their statements. The affidavits are taken on record as Mark “X” and “Y”, respectively.

We have considered the pleadings, the evidence adduced, the findings recorded by the trial Court, the affidavits filed by the parties and their statements made in Court today. Apart from

the fact that the respondent has admitted the allegation of desertion, a perusal of the pleadings and the evidence on record, reveals that respondent deserted the appellant in the year 2007 and made mere cosmetic attempts to resume co-habitation. The admission made by the respondent regarding the plea of desertion based upon a considered appraisal of the pleadings, the evidence is not collusive. Thus, taking into consideration the pleadings, the evidence on record, and the admission made by the respondent, admitting the plea of desertion, it is held that the appellant has succeeded in proving that the respondent deserted her, without just cause. The allegations of cruelty are, however, rejected for want of any clear and cogent pleadings or evidence.

The allegation of desertion having been proved and admitted by the respondent, the appeal is allowed, judgment and decree dated 09.07.2013, passed by the Additional District Judge, Fatehgarh Sahib is set aside and the marriage between the parties is dissolved by grant of a decree of divorce, on the ground of desertion. The appellant as stated by her shall not claim the custody or guardianship of the minor child of the parties or any maintenance/ alimony.

Decree sheet be drawn up accordingly.

(RAJIVE BHALLA)
JUDGE

September 24, 2015

(REKHA MITTAL)
JUDGE