

FAO-M-262-2013

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IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-M-262-2013

Date of decision : 08.12.2015

Kamaljit Singh

... Appellant

Versus

Kulwinder Kaur

... Respondent

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

Present: Mr.Ritesh Pandey, Advocate.

Mr.Anil Chawla, Advocate.

RAJIVE BHALLA, J.(ORAL)

The appellant challenges judgment and decree dated 15.01.2013, passed by the District Judge, Gurdaspur dismissing his petition for grant of a decree of divorce.

Counsel for the appellant submits that the appellant filed a petition for grant of a decree of divorce on the twin grounds of cruelty and desertion. A perusal of the pleadings and the evidence on record reveals that both these grounds have been proved but the trial Court has dismissed the petition by assigning reasons that are not only arbitrary but also perverse.

Counsel for the appellant states on instructions from the appellant that the appellant gives up the plea of cruelty but presses the

plea of desertion. Counsel for the appellant submits that a perusal of the evidence reveals that the respondent has been residing separately since October 2009 without any just cause or reason. A perusal of the deposition by the respondent reveals that apart from general allegations of demand of dowry and cruelty etc., she has not proffered any explanation that may even remotely prove that she has a valid reason or a just cause to live separately.

Counsel for the respondent states on instructions from the respondent Kulwinder Kaur, who is present in Court, that as the appellant has given up his allegations of cruelty, she is ready to admit the allegation of desertion provided the appellant pays permanent alimony.

Counsel for the appellant in response to the aforesaid statement, submits on instructions from Kamaljit Singh, the appellant, that as the respondent has agreed to admit the plea of desertion, the appellant is ready to pay permanent alimony of ₹11 lacs.

We have heard counsel for the parties and considered the statements made by the appellant and the respondent. The respondent has made a significant statement admitting the allegations of desertion. The legal consequences of her admission were explained to the respondent but she has remained steadfast in her stance that she admits the plea of desertion and fully understands the consequences of her statement. To rule out any possibility of coercion or collusion, the parties were directed to record their statements. The statements made by the respondent reads as

follows:-

“I was married to Kamaljit Singh on 24.02.2008. We have been living apart since 28.03.2008. I admit the ground of desertion without any coercion, fraud or collusion. The appellant should be directed to pay adequate alimony. I shall withdraw all cases filed by me or my family members at my behest against the appellant or his family members.”

The statement made by the appellant reads as follows:-

“I have heard the statement made by Kulwinder Kaur and agreed to pay permanent alimony of ₹ 11 lacs in full and final settlement of all claims i.e. maintenance, permanent alimony etc. past, present and future. I shall withdraw any case / complaint filed by me against the respondent or her relatives.”

The respondent made a further statement as under:-

“I accept the statement made by Kamaljit Singh and agree to the offer of permanent alimony of ₹11 lacs.”

We have once again considered the pleadings, evidence on record and the admission made by the respondent. Apart from the fact that the appellant has admitted the plea of desertion, a perusal of the pleadings and evidence on record reveals that there is sufficient evidence on record to prove the plea of desertion. The admission made by the respondent without coercion, fraud or collusion adds substance to the

plea of desertion.

As already recorded, the appellant has agreed to pay permanent alimony of ₹11 lacs and for that purpose he has brought a demand draft of ₹10 lacs and ₹1 lac in cash which he has been handed over to the respondent.

In view of what has been recorded hereinabove, the appeal is allowed, judgment and decree dated 15.01.2013 passed by the District Judge, Gurdaspur dismissing the petition for divorce is set aside and marriage between the parties is dissolved by grant of a decree of divorce on the ground of desertion, alone.

Decree sheet be drawn up accordingly.

(RAJIVE BHALLA)
JUDGE

(REKHA MITTAL)
JUDGE

December 08, 2015.

Davinder Kumar