

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-314 of 2013 (O&M)

Date of Decision: 19.2.2015

Karamjit Kaur @ Palo

....Appellant.

Versus

Prem Singh Dhillon

...Respondent.

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

PRESENT: Mr. Mohd. Yousaf, Advocate for the appellant.

Mr. Hitesh Verma, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Delay of 47 days in filing the appeal is condoned.
2. Feeling aggrieved by the judgment dated 15.5.2013 passed by the Additional Civil Judge (Senior Division), Barnala whereby the petition filed by the husband-respondent under Section 9 of the Hindu Marriage Act, 1955 (in short "the Act") for restitution of conjugal rights was allowed, the appellant-wife has approached this Court by way of instant appeal.
3. Shorn off unnecessary details, the facts relevant for the disposal of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 25.3.1999 at village Kot Dharmu, District Mansa as per Anand Karaj ceremony. After the marriage, the parties lived together as husband and wife at village

Dhilwan. Out of the said wedlock, a daughter and a son were born who were residing with the appellant. The appellant was a quarrelsome lady. On 26.12.2006, she went to her parental house along with the children on the pretext that her parents had to construct the house. When she did not turn up, the respondent had gone to bring her back but she flatly refused to return back. Thereafter, the respondent convened a panchayat but the appellant and her family members were not agreed to send her. The respondent moved an application before the Senior Superintendent of Police, Barnala on 8.4.2008 for rehabilitation of the appellant in her matrimonial home upon which she agreed to return back to her matrimonial home through panchayat. On the asking of the panchayat, the respondent brought her back on 20.4.2008. On 1.5.2008 the appellant again left the matrimonial home in the absence of the respondent and flatly refused to live with the respondent. The respondent was ready to keep her with him as his wife but she failed to join his company without any reason. Accordingly, the respondent filed a petition under Section 9 of the Act for restitution of conjugal rights. Upon notice, the appellant appeared and filed a written statement. Besides raising various preliminary objections, it was pleaded that the appellant was turned out of the matrimonial home after giving beatings. The respondent had studied upto M.A., B.Ed. with the help of money brought by the appellant from her farther. The respondent after getting job in a private school at Sehna tried to get rid of the appellant and wanted to marry with some other lady. The respondent used to demand more money from her but on her refusal, she was thrown out of the matrimonial home. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the

pleadings of the parties, the trial court framed the following issues:-

- “1. Whether the respondent has withdrawn from the society of the petitioner without any reasonable excuse? OPA
 2. Whether petitioner has no locus standi and cause of action to file present petition? OPR
 3. Relief.
4. In support of his case, the respondent examined Atma Singh as PW1, Sham Lal as PW2 and himself as PW3. On the other hand, the appellant examined Bachan Singh Lambardar as RW1, Amrik Singh as RW2 and herself as RW3.
5. The trial court on appreciation of evidence led by the parties, decided issue No.1 in favour of the respondent holding that the appellant had left his company without any reason and cause and had neglected and deserted him. Issue No.2 was decided against the appellant holding that the respondent had got locus-standi and cause of action had accrued to file the petition. Accordingly, the trial court vide judgment dated 15.5.2013 allowed the petition and passed a decree for restitution of conjugal rights by directing the appellant to join the company of the respondent within three months from the date of judgment. Hence, the present appeal.
6. Learned counsel for the appellant submitted that the appellant was treated with cruelty and harassed on account of demand of dowry by the respondent and his family members and a criminal complaint under Sections 406/498-A of the Indian Penal Code filed by her was pending adjudication. It was further submitted that the petition under Section 9 of the Act was filed only to create a ground for getting

the divorce from the appellant. The appellant had never withdrawn herself from the company of the respondent rather she was thrown out of the matrimonial home after giving beatings to her. According to the learned counsel, the trial court had misread the evidence led by the parties and wrongly passed a decree for restitution of conjugal rights.

7. On the other hand, learned counsel for the respondent supported the judgment passed by the trial court.

8. After hearing learned counsel for the parties, we do not find any merit in the contentions of the learned counsel for the appellant.

9. Section 9 of the Act provides for 'Restitution of Conjugal Rights'. It reads thus:-

“9. Restitution of conjugal rights.- When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation.- Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.”

According to the aforesaid provision, where either spouse has withdrawn from the society of the other without any reasonable

cause, the aggrieved party is entitled to seek restitution of conjugal right by presenting a petition to the District Court who on satisfying itself about the truthfulness of statements made in such petition and in the absence of any legal impediment in granting such petition, pass decree for restitution of conjugal rights. Under the Explanation, in a situation of dispute relating to reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse is on the person who has withdrawn from the society.

10. Adverting to the facts involved herein, it is noticed that in the present case, the respondent had examined PW1 Atma Singh and PW2 Sham Lal, who were members of the panchayat convened by him for bringing back the appellant to her matrimonial home who had stated that in December, 2006 the appellant had left the matrimonial home without any cause. The appellant had examined her father RW1 Bachan Singh who had admitted that he wanted the respondent to reside with him as *Ghar Jawai* as he had only two daughters. He had also stated that he had not moved any application regarding maltreatment meted out to the appellant by the respondent. He also admitted that he wanted that his daughter (the appellant) should reside in her parental house. Further, the respondent while appearing as PW3 supported the averments made in the petition. The trial court has rightly drawn the conclusion that the appellant had left the company of the respondent without any reasonable excuse and had neglected and deserted him as he was ready to keep her with him as his wife. The relevant findings recorded by the trial court read thus:-

“8. After hearing counsel for the parties and after going through the evidence led by the parties on file,

the court is of the considered opinion that the evidence led by the petitioner inspires confidence. Nothing has brought on file by the respondent about the maltreatment accorded by the petitioner and further about the demand of money by the petitioner from respondent. On the other hand, the petitioner has examined PW1 Atma Singh and PW2 Sham Lal, who were members of the panchayat convened by the petitioner for bringing back the respondent to the matrimonial home, which version is duly corroborated by the petitioner on file. the averments of the petitioner have also been supported by his duly sworn affidavit.

9. It is worth taking note that respondent has examined RW1 Bachan Singh, who is father of the respondent and he has categorically admitted that he has no son and has only two daughters and further he admitted that he wants the petitioner to reside with him alongwith their daughter as Ghar Jawai. He has further stated that they have not moved any application regarding maltreatment accorded by the petitioner to the respondent. The respondent has also admitted that she wants that the respondent should reside in her parental house and further she has not moved any application before any authorities regarding maltreatment accorded by the petitioner to her.

10. Thus, from the entire evidence adduced by the petitioner, it has been established on record that the respondent has left the company of the petitioner without any reason and cause and has neglected and deserted the petitioner. The petitioner has still love and affection with the respondent and is ready to keep her with him as his wife. Therefore, there is no reason to disbelieve the evidence produced by the petitioner.”

11. In view of the findings recorded by the trial court which could not be demonstrated to be perverse or erroneous in any manner being based on misreading or misappreciation of evidence, no fault could be found with the same. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 19, 2015
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(SNEH PRASHAR)
JUDGE