

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

**FAO No. M-354 of 2013
DATE OF DECISION :- August 06, 2015**

Ajay Kumar

...Appellant.

Versus

Anita

...Respondent

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present:- Mr. Mandeep Singh Bedi, Senior Advocate
with Ms. Manpreet Kaur, Advocate for the appellant.

Mr. Raman Mahajan, Advocate for the respondent

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? **Yes**

M.JEYAPPAUL, J.

1. Aggrieved by the dismissal of the petition filed by appellant-husband under Section 13 of the Hindu Marriage Act, 1955 praying for dissolution of marriage on the ground of cruelty and suppression of material facts as regards the disease of epilepsy by the respondent-wife, the present appeal has been preferred.
2. It has been contended by appellant-husband in his

petition of divorce that just after few days of marriage the respondent suffered severe attack of epilepsy/seizure and fell flatly on the ground and froth started coming out from her mouth. After gaining consciousness, she revealed to the utter dismay of the appellant and his parents that she was a chronic patient of epilepsy. She suffered a bout of seizure on 11.01.2009 and 8.3.2009 also. She is under depression for the last more than eight months due to frequent bouts of epilepsy. She behaved abnormally giving impression that she might commit any undesirable act. The appellant has sought for divorce on the aforesaid grounds.

3. The respondent resisted the plea for divorce contending that the appellant was very much aware that the respondent was not suffering from any disease. The parties lived together as husband and wife right from 30.11.2008 to 10.1.2010. It is stoutly denied that the respondent was a patient of epilepsy.

4. On the side of the appellant, six witnesses were examined and on the side of the respondent, the respondent was examined as RW1.

5. The trial Court having adverted to the evidence on record, came to the conclusion that there was no sufficient evidence to establish that the respondent treated the appellant cruelly. The disease of epilepsy was not one of the grounds for seeking divorce. Consequently, the petition under Section 13 of the Hindu Marriage Act filed by the appellant was dismissed by the trial Court.

6. We heard the submission made by learned counsel appearing on either side.

7. It is found that there is no specific details of cruelty allegedly committed by the husband. The appellant has come out with a surmise that the respondent had the tendency to commit suicide. In short, the appellant has not adduced sufficient evidence to establish that the respondent committed cruelty, upon him.

8. The next question that arises for consideration is whether the appellant is entitled to a decree for divorce, even if he establishes that the respondent is afflicted with the disease of epilepsy.

9. On a careful perusal of the provisions under Section 12 and 13 of the Hindu Marriage Act, 1955, we find that the appellant may set up a plea that a material fact was not disclosed to him at the time of marriage, to declare void the marriage under Section 12 of the Hindu Marriage Act. But there is no scope under Section 13 of the Hindu Marriage Act to file a petition for divorce on the ground that the respondent was afflicted with the disease of epilepsy.

10. The disease of epilepsy cannot be equated with unsoundness of mind or mental disorder as contemplated under Section 13(1) (III) of the Hindu Marriage Act.

11. In view of the above, we find that there is no ground made out to allow the plea for divorce sought for by the appellant. The trial court has rightly rejected the plea for divorce on the

aforesaid grounds.

12. In view of the above, confirming the judgment passed by the trial Court, the appeal stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

**(RAJ RAHUL GARG)
JUDGE**

August 06, 2015
p.singh