

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-379 of 2013

Date of Decision: 10.2.2015

Jugraj Singh

....Appellant.

Versus

Sukhparamjit Kaur

...Respondent.

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

PRESENT: Mr. Malkeet Singh, Advocate for the appellant.

Mr. Jasdev Singh Mehndiratta, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Feeling aggrieved by the judgment and decree dated 9.9.2013 passed by the Additional Civil Judge (Senior Division), Ludhiana whereby the petition filed by him under Section 9 of the Hindu Marriage Act, 1955 (in short "the Act") for restitution of conjugal rights has been dismissed, the appellant-husband has approached this Court by way of instant appeal.

2. Shorn of unnecessary details, the facts relevant for the disposal of the instant appeal as narrated therein may be noticed. The marriage of the parties was solemnized in the year 2000 at Khanna as per Sikh rites and ceremonies. After the marriage, both the parties lived together as husband and wife and cohabited as such at Ludhiana and out of the said wedlock, a daughter, namely, Jatinder Kaur @ Dupinder

Kaur and a son Kabir were born. It was a simple marriage and nothing was given to the appellant and his family members at the time of marriage. After a few days of the marriage, the behaviour of the respondent became rude and she started picking up quarrel on petty matters. She pressurized the appellant to live separate from his parents and to shift at Khanna to live as *Ghar Jawai* but the appellant did not agree. On 27.8.2007, she left the matrimonial home on the occasion of Raksha Bandan. At that time, she took away all the ornaments, valuable clothes and cash amount of ₹ 10,000/-. Thereafter, the appellant went to her parental house to bring her back but she did not turn and rather insisted him to shift at Khanna. The appellant along with his father again went to the parental house of the respondent to take her back but they insulted the appellant and his father. The appellant convened several panchayats to bring the respondent back but to no avail. In this way, the respondent had left the society of the appellant without any reasonable or sufficient cause. Accordingly, the appellant filed a petition under Section 9 of the Act for restitution of conjugal rights. The said petition was resisted by the respondent by filing a written statement. Besides raising various preliminary objections, it was pleaded that the petition was filed with an oblique motive to create evidence in his favour. The appellant had levelled false and baseless allegations against the respondent. In fact, the respondent was victim of the atrocities committed by the appellant. After sometime of the marriage, the appellant and his family members started maltreating, misbehaving and taunting the respondent for bringing less dowry. Even the appellant started demanding cash to the tune of lacs of rupees and on her refusal, the respondent was given severe beatings and was misbehaved and

maltreated. However, the parents of the respondent gave a sum of ₹ 1 lac to the appellant in November, 2003 after the marriage of her brother and again in December, 2004, paid ₹ 50,000/-. Thereafter, the appellant again started demanding ₹ 50,000/- to which the respondent and her parents showed their inability. On this, the behaviour of the appellant became bad to worse towards her and she was given beating by him. However, the parents of the respondent gave an amount of ₹ 50,000/- to the appellant with a hope that better sense would prevail but nothing was changed. The appellant again demanded a car or cash amount to purchase a car. On showing her inability, the respondent along with her minor children was turned out of the matrimonial home on 27.8.2007 after giving severe beatings. Since then, she along with her minor children was residing in her parental house. All the *istridhan* was lying in the house of the appellant. In the first week of September, 2007, the parents of the respondent convened a panchayat and requested the appellant to keep and maintain her and her minor children but the appellant did not pay any heed to their request. Thereafter, the respondent filed a petition under Section 125 of the Code of Criminal Procedure which was pending adjudication. 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 left the society of the petitioner due to sufficient or reasonable cause or whether she was forced to leave the matrimonial house along with her children due to cruelty?OPR

2. Relief.

3. In support of his case, the appellant appeared as PW2 and examined his father Gurcharan Singh as PW1 who tendered his affidavit Ex.PW1/A and documents Ex.PW1/A and PW1/B. The appellant also tendered his affidavit as Ex.PW2/A and various documents as Ex.PW2/1 to Ex.PW2/11. He also examined his mother Charan Kaur as PW3 who also tendered affidavit Ex.PW3/A and documents as Ex.PW1/1 to Ex.PW1/7. To rebut the evidence of the appellant, the respondent examined herself as DW1 and tendered her affidavit as Ex.DA and also examined her mother Rachppal Kaur as DW2 who tendered her affidavit as Ex.DB and her uncle Joginder Singh as DW3 who tendered his affidavit as Ex.DC.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 against the appellant holding that the respondent had sufficient and reasonable cause to live separate from the appellant along with her children as she was being treated with cruelty by the appellant. Accordingly, the trial court vide judgment and decree dated 9.9.2013 dismissed the petition filed under Section 9 of the Act. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the respondent had withdrawn herself from the company of the appellant without any reason and cause. It was further contended that the appellant made efforts directly and through panchayats to bring the respondent back to her matrimonial home but her parents refused to send her. According to the learned counsel, the trial court had misread the evidence led by the parties and wrongly dismissed the petition filed by the appellant.

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

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

8. 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.

9. Examining the factual scenario herein, it may be noticed that at the time of marriage, the appellant was posted at Ludhiana and the respondent lived with him in police lines for seven years. Thereafter, the appellant turned her out from the matrimonial home. The respondent in her cross-examination denied that the appellant had left her in her parental house on 27.8.2007 or that he had come to her parental house to take her after 27.8.2007. She also stated that the appellant demanded a car and money in November, 2003 and he took ₹ 1 lac from her parents. Deepinder Kaur daughter and Sehbag Singh son are living with the respondent. The appellant had filed a petition under the Guardians and Wards Act. The respondent has to file a petition under Section 125 of the Code of Criminal Procedure claiming maintenance whereas the appellant had not paid maintenance to the respondent. The appellant is working in police department. The version of the respondent was supported by her mother DW2-Rachhpal Kaur and DW3-Joginder Singh. During their cross-examination, nothing had come on record that she had left the company of the appellant without any reasonable excuse rather it came on record that he was harassing and maltreating her by raising demand of dowry. She was turned out from the matrimonial home and the petition was filed only to create a defence in another proceedings. On appreciation of evidence, the irresistible conclusion drawn by the trial court is that the respondent had withdrawn from the society of the appellant for a sufficient cause as she was treated with cruelty. The relevant findings recorded by the trial court read

thus:-

“13. Rachhpal Kaur also supported the version of respondent and Joginder Singh also supported the version of the respondent. During cross-examination nothing could be elicited from which any inference can be drawn that the respondent had left the company of the petitioner without any reasonable cause rather it has come on record that the petitioner was harassing and maltreating the respondent and also raising demand of dowry. She was turned out from the matrimonial house and the present petition has been filed only to make defence in another proceedings and it is well settled law that a person cannot get the benefit of his own wrongs. The respondent has fully proved that she had sufficient and reasonable cause to live separate from the petitioner along with her children and she was being treated with cruelty by the petitioner.”

10. 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 10, 2015
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(SNEH PRASHAR)
JUDGE