

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

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FAO No.725 of 2015.

DATE OF DECISION: February 11, 2015.

SATISH

....APPELLANT.

VERSUS

KAMLA

....RESPONDENT.

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

Present: Mr. Gautam Dutt, Advocate for the appellant.

SNEH PRASHAR, J.

Receipt of Rs.5000/- on account of costs imposed by this Court, deposited with Legal Services Authority has been produced. Same is taken on record.

1. Assailing the judgment and decree dated 23.12.2014 passed by the learned District Judge, Family Court Gurgaon, dismissing the petition under Section 13(i) (ia) and (ib) of the Hindu Marriage Act, 1955 (in short, “the Act of 1955”) presented by appellant-petitioner Satish (hereinafter referred to as “the petitioner”) for dissolution of his marriage with respondent Kamla by way a decree of divorce, the instant appeal was filed.

2. The relevant facts which need to be recapitulated are as under:-

The marriage between the parties was solemnized on 10.12.1997 according to Hindu rites and ceremonies at Gurgaon. After marriage they cohabited as husband and wife and two children, namely, Manisha (daughter) and Gaurav @ Samir (son) were born out of the wedlock on 23.09.2001 and 22.09.2004 respectively at village Mohammedpur Jharsa. The father of the respondent had died much prior to their marriage. The respondent was illiterate and elder to the petitioner.

The petitioner pleaded that the factum of illiteracy and age of the respondent came to his knowledge after marriage and at a very late stage. He is a priest and caters to the worshipers who come to the temple to offer prayers. The respondent being a short-tempered lady was completely under the influence of her family members. She pressurized him to live separate from his family and when he refused, she started quarreling with him. She was provided all comforts yet she threatened to falsely implicate him in a dowry case. She would frequently leave for her parental home and stay there for long spells. She had spent almost 12 years at her parental home out of the total period of their marriage. He had been requesting her to behave properly and abstain from quarreling but she failed to perform her marital duties. She always used abusive and harsh language towards his family and insulted him and the devotees who approached him for various religious matters.

Ultimately, he set up a separate residence with the respondent yet she was not satisfied and became more aggressive towards him and his parents under the misguidance of her mother and elder brother. She was

misused by her brothers Bhim and Jagee, who were unmarried and she used to steal money to help them. Also she often used to leave the matrimonial home and would refuse to return. Only on the intervention of the Panchayat she would come back but then again would very soon leave his conjugal company. In December, 2004 she abandoned her son Gaurav @ Sameer and went to her parental home. She took daughter Manisha with her without his consent. He convened several Panchayats and in February/March 2010 she returned to him and their children were admitted to the New Era Public School, Mohammandur, Hursinghpur, Gurgaon on 09.04.2010. The behaviour of the respondent still did not change as she did not permit him to establish marital relations with her. In fact, there had been no physical relationship between them since December 2004. Finally, on 02.03.2012 the respondent left him and she took away the daughter with her when her exams were to commence on 05.03.2012. All efforts made by him to bring her back proved futile as she refused to return. With the aforesaid submissions the petitioner prayed for dissolution of his marriage with the respondent on the ground of cruelty and desertion.

3. The respondent contested the petition. She pleaded that the petitioner was a person of loose character and had illicit relations with his brother's wife. He was living with her illegally. She used to be beaten by him and abandoned at her parental home. Because of his violent behaviour she had instituted a petition for protection under Section 23 (2) of the Protection of Women from Domestic Violence Act, 2005 which was

decided in her favour on 26.05.2015, but despite the directions given the petitioner and his family members had failed to provide her the required amenities.

The respondent further pleaded that she was living with her parental family along with her minor daughter since 02.03.2012, because the petitioner had thrown her out from the matrimonial home. Being dissatisfied with the dowry given by her parents at the time of marriage, she was beaten and ill treated constantly by the petitioner. She denied that her family had misled the petitioner about her education or age and pleaded that she always performed all her matrimonial duties properly. Controverting all other averments made in the petition, she prayed for dismissal of the petition.

4. On the pleadings of the parties, following issues were framed:-

(1) Whether the petitioner is entitled for a decree of divorce on the ground as mentioned in the petition, as alleged? OPP.

(2) Relief.

5. Both the parties adduced evidence to substantiate their respective contentions.

The petitioner stepped into the witness box as PW1 and reiterated his allegations against the respondent. He also examined his brother PW2 Devender Kumar and PW3 Ashok Kumar, who supported his version.

On the other hand, the respondent herself appeared as RW1

and made a self serving statement. To promote her version, she also examined her minor daughter RW2 Manisha.

6. Analyzing the evidence adduced by the parties and the submissions made on their behalf, learned trial Court finding that the petitioner-husband had utterly failed to prove that he had been treated with cruelty at the hands of the respondent-wife decided Issue No.1 against him. As a result thereof, the petition was dismissed with costs.

7. Feeling aggrieved by the impugned judgment and decree dated 23.12.2014 passed by learned trial court, appellant Satish preferred the instant appeal.

8. The submissions made by Mr. Gautam Dutt, learned counsel representing the appellant have been considered.

9. Admittedly, the parties were married on 10.12.1997 and two children were born out of their wedlock. Learned counsel for the appellant argued that in his deposition the appellant gave a detailed narration of the act and conduct of the respondent which was sufficient to prove that she had been treating him with cruelty without any fault on his part. The appellant stated that the respondent was of quarrelsome and aggressive nature and used to misbehave with him from the very beginning. She lived less with him and more at her parental home. She did not want to live with the family and also refused to perform household chores. Under her pressure, the appellant took a separate residence yet the respondent kept creating problems for him. After their son was born, she abandoned the small child and went to live with her parents. The appellant was able to

persuade her to come back only by seeking intervention of brotherhood. Lastly, when she left the matrimonial home, she took away the daughter with her just when her final examination was to start.

Learned counsel contended that the deposition of the appellant was supported by his brother PW2 Devender Kumar. PW3 Ashok Kumar, who was not related to the appellant also corroborated his version. The testimony of the appellant coupled with the statement of the witnesses proved that it is not possible for the appellant to live with the respondent under the same roof because of her rude and harsh behaviour.

10. Scrutinizing the evidence led by the parties in the light of allegations levelled by the appellant against the respondent, the findings recorded by learned trial court are as under:-

“As on date the respondent is living in her matrimonial home on the first floor, while the petitioner is residing on the ground floor. She has stated that she wants to live with him and has never denied him any conjugal rights. The petitioner course denies this but a mere denial without there being other corroborative evidence is insufficient to prove his version.

x x x x
x x x x

The respondent had alleged that the petitioner was living in adultery with his own elder brother's wife. There is no direct evidence in this regard aside from the statement of the respondent. Their daughter Manisha aged 14 years has appeared as RW2 and has stated that the petitioner lives with her Tai Ji and grandmother. Her brother Gaurav also lives with them. This however does not mean that the petitioner is

living in adultery. No doubt, the respondent has been unable to prove her allegation of adultery but this is not the same as the allegation being false. As such, no help can be availed by the petitioner from Smt. Nidhi Dalela versus Deepak Dalela AIR 2002 Rajasthan 128 where divorce was granted to the husband where such allegations were leveled by the wife.

There has to be something more than mere allegations to prove the version of either party. In a matrimonial relationship, no doubt the parties are the best witnesses but their statements must be carefully considered in the light of all attending facts. The quantity of evidence can never outweigh the quality of evidence. As such, though the petitioner has examined three witnesses including himself, the testimony of the respondent and her daughter cannot be ignored merely because they are out number.

11. Learned counsel for the appellant failed to point out any illegality or perversity in the findings of learned trial court emerging from mis-appreciation or misreading of the evidence of the appellant. “Cruelty” for the purpose of Section 13(1)(ia) is to be taken as a behaviour by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. In the case in hand all allegations levelled by the appellant against the respondent were general in nature. Not a single specific incident could be narrated by him which could come in the ambit of “cruelty” as observed above. Rather, his own daughter stepped into the witness box to disclose his conduct towards her and her mother. In ***Sujata Patil v. Uday Madhukar Patil, 2007(1) R.C.R. (Civil)***

404 the term “cruelty” has been explained as under:-

“The word “cruelty” and the kind or degree of “cruelty” necessary which may amount to a matrimonial offence has not been defined in the Act. What is cruel treatment is to a large extent a question of fact or a mixed question of law and fact and no dogmatic answer can be given to the variety of problems that arise before the court in these kind of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion whereby one gives vent to his or her feelings, without intending to injure the other. It need not consist of direct action against the other but may be misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty may be inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and interference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty.”

12. Importantly, it came in evidence that the respondent is residing on the first floor of the same house in which the appellant is residing. Above that, when the respondent appeared in the witness box,

she outrightly expressed her willingness to join conjugal company of the appellant. Learned trial court rightly held that there is nothing on record which indicates that the respondent exhibited any disrespect to the appellant or his family or that she had ever misconducted herself. Rather, the version of the appellant that the respondent had abandoned him for her parental home is falsified by the fact that she is still living in his house with her minor daughter. Apparently, it is he who is at fault in not taking care of her and their daughter.

Thus, the findings of learned trial court do not warrant intervention and there being no merit in the appeal, it is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

February 11, 2015.

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Note: Whether to be referred to the Reporter or not? Yes/No.