

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

FAO-M No.454 of 2014 (O&M).

DATE OF DECISION: February 11, 2015.

AMRIK SINGH

....APPELLANT.

VERSUS

BABLI DEVI

....RESPONDENT.

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

Present: Mr. Surinder Singh Siao, Advocate for the appellant.

SNEH PRASHAR, J.

1. A petition bearing HMA Case No.47 of 2011 under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) for dissolution of marriage by a decree of divorce was filed by appellant-husband Amrik Singh against his wife-respondent Babli Devi, which was dismissed by learned Additional District Judge, Fatehgarh Sahib, vide judgment and decree dated 12.11.2014. Assailing the said judgment and decree, the instant appeal was preferred by the appellant-husband.
2. Precisely, the facts extracted from the record are as under:-

The marriage between the parties was solemnized in January,

1996 at village Santemajra, District Mohali according to Hindu rites and ceremonies. After marriage, they lived together as husband and wife at village Rasulpur, District Fatehgarh Sahib and according to the appellant no child was born out of their wedlock.

Appellant Amrik Singh averred that the respondent-wife was not happy with the matrimonial alliance and for that reason she used to leave the matrimonial home for considerable long periods without any excuse. After each such incident, he used to bring her back with the intervention of respectables of their families. After returning, she would create problems for him despite the fact that he would try to accommodate her in every manner. Such events carried on for about 15 years. Finally the respondent left the matrimonial home in February, 2009 without any reasonable excuse and since then was living separately. Alleging that the respondent had deserted him for a period of more than two years prior to the filing of the petition, the appellant prayed that his marriage with the respondent be dissolved.

3. The respondent-wife contested the petition by filing a written statement. She pleaded that out of their wedlock, a male child was born who died at the time of birth. The appellant was having a keep, namely Sunita Devi, whom he intended to marry. She was living in a joint family and all the members of his family used to demand money from her parents. Once a sum of Rs.1,70,000/- and second time a sum of Rs.50,000/- was paid by her parents. She denied having left the company of the appellant without any sufficient reason and prayed for dismissal of

the petition.

4. The appellant filed rejoinder controverting the objections raised by the respondent and reasserted his claim. On the pleadings of the parties, following issues were settled by learned trial court:-

1. Whether the respondent has deserted the petitioner for a period of more than two years immediately preceding the presentation of petition without any reasonable excuse? OPP.
2. Whether the petition is not maintainable in the present form? OPR.
3. Relief.

5. During evidence, the appellant himself stepped into the witness box as PW1 and reiterated his allegations against the respondent. He also examined his brother PW2 Piara Singh, who corroborated his version.

On the other hand, the respondent appeared as RW1 and made a self serving statement. She further examined RW2 Jasbir Singh and tendered documents Ex.R1 to Ex.R6 as well as Mark-RA and Mark-RK.

6. Scrutinizing the evidence adduced by the parties and the submissions made on their behalf, learned trial Court came to the conclusion that the respondent cannot be said to have deserted the petitioner and 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 12.11.2014 passed by learned trial court, appellant Amrik Singh

preferred the instant appeal.

8. The submissions made by Mr. Surinder Singh Siao, learned counsel representing the appellant have been considered and record perused.

9. The marriage between the parties was solemnized in the month of January, 1996 and thereafter they lived together as husband and wife at village Santemajra, Tehsil Kharar, District Mohali. Importantly, the appellant pleaded that no issue was born out of the wedlock but in her pleadings the respondent disclosed that a male child was born to her from the loins of the appellant but he died at the time of birth.

According to the appellant, the respondent was not happy and comfortable with the matrimonial alliance and very often used to leave the matrimonial home and stay away for considerably long periods. He used to bring her back with the intervention of respectables of both families, but then she would create various problems for him. The process carried on for 15 years and ultimately the respondent left the matrimonial home in February, 2009 without any rhyme or reason. As such, invoking the provisions of Section 13(1)(ib) of the Act of 1955, the appellant by way of instant petition sought a decree of divorce on the ground that he had been deserted by the respondent.

10. Leaned counsel for the appellant argued that during her deposition the respondent admitted that she was living separate from the appellant for a period of more than two years immediately preceding the presentation of the petition. No plausible reason could be explained by her

for leaving the conjugal company of her husband. The appellant by way of his affidavit Ex.PW1/A reiterated his allegations and also testified that despite all efforts made by him to accommodate the respondent, she had left the matrimonial home without any justifiable reason and had deserted him. His version was corroborated by Piara Singh, his brother, who too deposed that the respondent was not happy in the company of the appellant from the very beginning of the marriage; their relations remained strained; the respondent was in the habit of leaving the matrimonial home in order to live at her parental house and would stay there for long periods; and ultimately she left in February, 2009 without any sufficient cause and did not return thereafter. Learned counsel asserted that both the appellant and his brother were thoroughly cross-examined by the respondent but nothing such could be derived from them which could render their testimony untrustworthy. As such, on the ground of desertion the appellant is entitled to dissolution of his marriage with the respondent.

11. Having considered the submissions of learned counsel for the appellant, we find no merit in the same. Desertion implies not only the factum of separation but also the intention to separate permanently and put an end to the matrimonial relationship and cohabitation. In order to entitle the appellant to a decree of divorce on the ground of desertion, the petitioner-appellant was required to prove not only the fact that the respondent was living separate from him for the last more than two years preceding the presentation of the petition, but also that she had no

sufficient reason to live away from him and by living separately she intended to end the matrimonial relationship.

12. Scrutinizing the ocular and documentary evidence led by the parties in contest to the allegation of desertion raised by the appellant, the findings of learned trial court were as under:-

“In the case in hand although respondent herself admits that she is living separately from the petitioner for a period of more than two years immediately preceding the presentation of petition, yet she states that she has not left the company of petitioner of her own free will, but was so forced by him. She further states that out of her wedlock with the petitioner, a male child was born and who died at the time of his birth. This fact although has been denied by petitioner in his pleadings, yet he admits the same by way of cross-examination when stepping into witness box as PW1. The evidence which has been brought on record by both the parties clearly show that relations between the two became strained as they did not have a living child out of this wedlock. Respondent alleges that petitioner has a keep and whom he wants to marry. Respondent Babli Devi examined herself in the court as RW1 and in the course of her cross-examination, a specific suggestion was put to her by counsel for petitioner that since no child was born out of this wedlock, relations between her and the petitioner were strained on this account. Petitioner Amrik Singh has examined himself as PW1 and in the course of his cross-examination, he has admitted that in the year 2011, matrimonial differences between him and the respondent were resolved by the officials of women cell, Mohali by way of compromise mark 'RA'. He also admits the fact that respondent had moved an application against him to SSP, SAS Nagar, Mohali dated 20.2.2012 mark 'RK'. These documents and the admission made by the petitioner himself by way of cross-examination clearly goes to show that although respondent has been residing separately from the petitioner since February 2009, yet there cannot be said to be an intention on her part to separate permanently from the petitioner and put an end to her matrimonial relationship and cohabitation. Both these documents clearly goes to show that the petitioner had developed extra marital relationship with another lady and because of which relations between the petitioner and the respondent got strained. Matter between the two seems to have been resolved with the

intervention of the officials of women cell, Mohali by way of compromise mark 'RA', but it seems that thereafter as well some complications developed between the two. In the year 2012, respondent even approached the police officials with regard to petitioner having married another lady without divorcing her. IN the above said circumstances, it does not follow that respondent of her own and without any reasonable excuse is living separately from the petitioner. It also does not follow that she intends to bring an end to her matrimonial relationship with the petitioner. Rather it is on account of behaviour of petitioner that she has been forced to reside separately from the petitioner. In the said circumstances, respondent cannot be said to have deserted the petitioner as referred to in section 13(1)(b) of the Hindu Marriage Act.”

13. Indeed, as noticed by learned trial court, the respondent though admitted that she was living separate from the appellant for the last more than two years but explained that it was under compelled circumstances that she was living away from her matrimonial home. She testified that the appellant was having extra marital affair with another lady because of which the relations between her and the appellant became strained. The compromise deed Mark-RA and the copy of application given by the respondent to Senior Superintendent of Police, S.A.S. Nagar, Mohali dated 20.02.2012 Mark-RK are the pointer to support the allegation of the respondent. The reason for marital discord between the parties was an extra marital relationship of the appellant with some other lady. The respondent neither intended to live separate from the appellant permanently nor had put an end to her marital bond with him. It was under compelled circumstances created by the appellant that she was living away from the matrimonial home. Concealment and falsity in the deposition of the appellant is further evident from the fact that in his

pleadings as well as in his affidavit Ex.PW1/A he stated that no issue was born out of his wedlock with the respondent but in his cross-examination he admitted, as was stated by the respondent, that a male child was born but he did not survive and died at the time of his birth.

Thus, finding no adversity or perversity in the findings of learned trial court which could call for intervention by this Court and upholding the findings of learned trial court, the appeal is 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.