

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-53 of 2014

Date of Decision: 12.1.2015

Jagtar Singh

....Appellant.

Versus

Veerpal Kaur

...Respondent.

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

PRESENT: Mr. N.K. Manchanda, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the husband against the judgment and decree dated 2.12.2013 passed by the Additional District Judge, Moga, whereby the petition filed under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") by him for dissolution of marriage by a decree of divorce on the ground of cruelty, was dismissed.

2. A few facts necessary for adjudication of the instant appeal as narrated therein are that the marriage between the parties was solemnized on 6.2.2006 at village Gholia Kalan, Tehsil Baghapurana, District Moga by way of Anand Karaj ceremony. After the marriage, the parties lived together as husband and wife and cohabited as such for about 4¼ years. Out of the said wedlock, two children, namely, Gursharan Singh and Gurpreet Singh were born. The parties were leading a cordial relations and the petitioner had gone to Bahrain where he was working as Shuttering Carpenter and was earning ₹ 30,000/- per

month. He used to send money for maintenance of the respondent and minor children. As the marriage of the sister of the respondent was to be performed, the parents of the respondent had taken ₹ 2 lacs from the respondent for her marriage. They had taken another sum of ₹ 2 lacs from the respondent for their domestic needs in the absence of the appellant. On returning from Bahrain, the appellant came to know about lending of money by the respondent to her parents. As the appellant wanted to start his own work in India, he asked the respondent to bring back money from her parents. However, the respondent showed inability of her parents to return the money. The respondent started quarrelling with the appellant on petty matters. The appellant tried to persuade the respondent so many times at his own and also through relatives but to no effect. The respondent started levelling false allegations of adultery with the wife of his brother. In the month of November, 2010, the respondent had left the house of the appellant. The appellant tried his level best to bring her back but all in vain. Even the appellant convened a panchayat and had gone to the parental house of the respondent to bring her back but she did not agree. Accordingly, the appellant filed a petition under Section 13 of the Act for dissolution of marriage by a decree of divorce on the ground of cruelty. The said petition was contested by the respondent by filing a written statement. Various preliminary objections were raised. It was pleaded that the appellant was not satisfied with the dowry articles given to him and his family members at the time of marriage and they had raised a demand of ₹ 4 lacs from her parents. On her refusal to fulfill the said demand, the appellant had given her beatings and turned her out from the matrimonial house on 20.11.2010 along with the minor children. The

other averments made in the petition were denied and a prayer for dismissal of the same was made. The appellant filed replication controverting the averments made in the written statement and reiterating that made in the petition. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty, if so, its effect? OPP
2. Whether respondent has deserted the company of petitioner without any reasonable cause for a period of two years, if so, its effect? OPP
3. Whether the petition is not maintainable? OPR
4. Whether the petitioner has no locus standi to file the present petition? OPR
5. Relief.

3. In support of his case, the appellant besides examining himself as PW1, also examined PW2 Charan Singh and PW3 Bhajan Singh. On the other hand, the respondent examined Pritam Singh as RW1, Amarjit Singh as RW2 and herself appeared as RW3.

4. The trial court took issues No.1 and 2 together being inter-connected and on appreciation of evidence led by the parties, decided the same against the appellant holding that the allegations levelled by the appellant were concocted and after thought just to get rid of his relations with the respondent. Further, the appellant was duty bound to prove the allegations levelled by him to the hilt but the evidence produced by him was not sufficient to hold so. Issues No.3 and 4 were decided against the respondent being not pressed. Accordingly, the trial court vide judgment and decree dated 2.12.2013 dismissed the petition

filed under Section 13 of the Act. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the cogent and convincing evidence was produced on record to prove that the respondent had treated the appellant with cruelty. Learned counsel further submitted that the respondent left the company of the appellant without any rhyme or reason for more than two years continuously immediately preceding to the filing of the petition. It was next submitted that the appellant was entitled to a decree of divorce on the ground of cruelty but the trial court had wrongly dismissed the petition filed by him.

6. This Court vide order dated 25.3.2014 while issuing notice of motion to the respondent for 27.5.2014 had directed the appellant to bring a bank draft for a sum of ₹ 22,000/- in favour of the respondent towards litigation expenses. However, the learned counsel for the appellant had failed to comply with the order dated 25.3.2014 and showed inability of the appellant to pay the litigation expenses to the respondent.

7. After hearing learned counsel for the appellant, we do not find any merit in the appeal. It would be expedient to refer to Section 24 of the Act which reads thus:-

“24. Maintenance pendente lite and expenses of proceedings- Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of

the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable: Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.”

8. Section 24 of the Act empowers the matrimonial court to award maintenance pendente lite and also litigation expenses to a needy and indigent spouse so that the proceedings can be conducted without any hardship on his or her part. The proceedings under this Section are summary in nature and confers a substantial right on the applicant during the pendency of the proceedings. Where this amount is not paid to the applicant, then the very object and purpose of this provision stands defeated. No doubt, remedy of execution of decree or order passed by the matrimonial court is available under Section 28A of the Act, but the same would not be a bar to striking off the defence of the spouse who violates the interim order of maintenance and litigation expenses passed by the said Court. In other words, the striking off the defence of the spouse not honouring the court's interim order is the instant relief to the needy one instead of waiting endlessly till its execution under Section 28A of the Act. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time consuming execution proceedings for realising the amount. Court cannot be a mute spectator watching flagrant

disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure. Needless to say, the remedy under Section 28A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off.

9. The Madras High Court in **Narayana Nadar v. Jayakodi Ammal 1990(1) DMC 596** dealing with similar situation had noticed as under:-

“The purpose behind Section 24 of the Act is that parties to a matrimonial case should not take undue and unfair advantage of a superior financial capacity, to defeat the rightful claims of a weaker party. The proceedings under Section 24 of the Act serve a limited purpose, i.e. during the pendency of the proceedings to enable the weaker party to establish rights without being in any manner hindered in that attempt by lack of financial support. It is true that Section 28A of the Act provides for the enforcement of orders of execution; but the process of such execution

is a long and arduous one and if execution is to be considered the only method of enforcement, the matrimonial proceedings have to be stayed till the execution is completed. To put it differently, to secure the benefit of an order under Section 24 of the Act by resort to the process of execution, the parties may have to endure, in some cases at least, an endless wait. The enforcement by execution would not also further the objects of the Act. Matrimonial proceedings should be dealt with expeditiously and relief afforded to the parties.”

10. Concurring with the aforesaid view and following the pronouncement of Calcutta High Court in **Anita Karmokar v. Birendra Chandra Karmokar, AIR 1962 Cal. 88**, Andhra Pradesh High Court in **Atreyapurapu Venkata Subba Rao v. Atreyapurapu Venkata Shyamala, 1990(II) DMC 486** and this Court in **Ram Swaroop v. Janak, AIR 1973 P&H 40**, the Kerala High Court in **C.S. Mangalam v. Velayaudhan Asari, AIR 1993 Kerala 181** had opined as under:-

“7. In the light of the above decisions, I hold that the order passed by the learned Subordinate Judge in I.A. No. 3603 of 1991 dated 7-11-1991 is clearly illegal and perverse. The court below had inherent jurisdiction under Section 151 of the Civil P.C. to give effect to its order. It had inherent jurisdiction to prevent the abuse of the process of the court. In giving effect to its order, the court below would have been justified to strike off the defence, even if there is

no such provision in the Hindu Marriage Act. Instead of exercising the jurisdiction so vested in the court, the lower court has thrown its hands in despair and has offered a gratuitous legal opinion to the revision petitioner to file an execution petition, which, as stated by Banerjee, J. in Anita Karmokar's case AIR 1962 Cal 88, is not an easy going highway, and is beset with all imponderables and practical difficulties.”

11. Where the maintenance pendente lite was not paid in pursuance to an order passed under the Act, this Court in **Krishan Kumar v. Monika Grover 2011(6) RCR (Civil) 121** held that the erring spouse was disentitled to be heard on merits for disobeying the order of the court with the following observations:-

“In Rani's case (supra), this court allowed appeal filed by wife against decree of divorce after the defence of the husband was struck off on account of non-payment of maintenance as fixed under section 24 of the act. Relevant para 7 of the judgment is extracted below:-

“No doubt, wife can file a petition under Order 21 Rule 37 Civil Procedure Code for the recovery of this amount and the husband can be hauled up under the contempt of Courts also for disobedience of the aforesaid Court's order, but Section 24 of the Act empowers the matrimonial Court to make an order for maintenance pendente lite and for expenses of

proceedings to a needy and indigent spouse. If this amount is not made available to the applicant, then the object and purpose of this provision stand defeated. Wife cannot be forced to take time consuming execution proceedings for realising this amount. The conduct of the respondent-husband amounts to contumacy. Law is not that powerless as to not to bring the husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to the wife, his defence can be struck out. No doubt, in this appeal he is respondent. His defence is contained in his petition filed under Section 13 of the Act. In a plethora of decisions of this Court in **Smt. Swarno Devi v. Piara Ram, 1975 HLR 15; Gurdev Kaur v. Dalip Singh, 1980 HLR 240; Smt. Surinder Kaur v. Baldev Singh, 1980 HLR 514; Sheela Devi v. Madan Lal, 1981 HLR 126 and Sumrati Devi v. Jai Parkash, 1985(1) HLR 84** it is held that when the husband fails to pay maintenance and litigation expenses to the wife, his defence is to be struck out. The consequence is that the appeal is to be allowed and his petition under Section 13 of the Act is to be dismissed.”

12. Similar view has also been expressed by this Court in **Asha**

Rani v. Yash Pal 1993(1) HLR 30, Kanti Devi v. Balbir Singh 1990(1) HLR 32, Gurjeet Kaur alias Guddi v. Amar Singh 1997(1) HLR 429 and Santosh v. Balwinder Kumar 1997(1) HLR 463.

13. The appellant has failed to make the payment on account of litigation expenses under Section 24 of the Act as directed by this Court, therefore, his defence is liable to be struck off. In other words, the non-payment of maintenance or litigation expenses dis-entitles the appellant for hearing of the appeal on merits. Further, the trial court while dismissing the petition of the appellant filed under Section 13 of the Act had concluded that the allegations levelled by him were concocted and after thought just to get rid of his relations with the respondent when she had demanded maintenance and dowry articles from him. It was noticed by the trial court that the appellant was duty bound to prove the allegations levelled by him to the hilt but the evidence adduced by him was not sufficient to hold that the respondent had treated the appellant with cruelty or desertion.

14. The findings recorded by the trial court have not been shown to be erroneous or perverse in any manner which may warrant interference by this Court. Further, the appellant had failed to pay the litigation expenses to the respondent as directed by this Court which disentitles him to be heard on merits and also a decree of divorce. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**January 12, 2015
gbs**

**(SNEH PRASHAR)
JUDGE**