

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

FAO-M-68-2014 (O&M)

Decided on : 07.09.2015

Khushbu Rani

.... Appellant

VERSUS

Anand Kansal

..... Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE NAVITA SINGH

Present: **Mr.Manoj Kumar, Advocate, for the appellant.**

Mr.Naresh Kaushik, Advocate, for the respondent.

RAJIVE BHALLA, J. (ORAL)

The appellant-Khushbu Rani, wife of Anand Kansal (respondent), challenges judgment and decree dated 17.01.2014, passed by the Additional District Judge, Panchkula, dismissing her petition for grant of a decree of divorce on the ground of cruelty and desertion.

During pendency of the appeal, both parties have filed separate affidavits, dated 07.09.2015 (Mark 'X' and Mark 'Y') respectively, which are taken on record. A perusal of the affidavit Mark 'X', filed by the appellant, reveals that apart from other matters, she has given up the plea of cruelty and prays for grant of a decree of divorce on the ground of desertion. The affidavit Mark 'Y' filed by the respondent reveals that he has accepted the plea of desertion as pleaded in the original petition filed under Section 13 of the Hindu Marriage Act, 1955.

Counsel for the parties as well as the parties who are present in Court and have been duly identified by their respective counsel, pray that in view of contents of the affidavits and the fact that the respondent has accepted the allegation of desertion, the judgment and decree dated 17.01.2014, passed by the Additional District Judge, Panchkula, may be set aside and the marriage between the parties may be dissolved by grant of a decree of divorce, on the ground of desertion.

We have heard counsel for the parties, interacted with the parties and explained to them the consequences of the contents of their affidavits and the acceptance by the respondent of the plea of desertion. We are satisfied from their respective response as well as contents of their affidavits, that parties are conscious of the consequences of their admissions and that the respondent has admitted the plea of desertion without any coercion or undue influence and on a bonafide consideration of the facts of the case. A relevant extract from the affidavit Mark 'X' filed by the appellant reads as follows: -

“2. That the appellant shall withdraw all the litigation civil, criminal or maintenance pending against the respondent as well as family members. The applicant will also withdraw the complaint u/s 494 against the respondent-husband pending before the Court below and all other matters pending before the Hon'ble High Court as well as before any competent Court of law or any other agency shall be withdrawn by the deponent. The appellant shall not claim for any maintenance or any alimony, present permanent or future. The minor daughter is in the custody of respondent-husband and shall remain in custody and maintained by the respondent-husband. The appellant shall not file any other fresh case/complaint in any manner against the respondent and his family members.

Any maintenance order in favour of the appellant, if any by any Court shall be ceased to operate.

3. That the respondent has also agreed to withdraw all the litigations if any in court against the appellant-wife and there shall be no litigation pending between the parties. The minor daughter is in the custody of the respondent-husband and shall be maintained and brought up by the respondent. The respondent shall not file any other fresh case/complaint in any manner against the appellant and her family members.

4. That the deponent has agreed to the offer of respondent-husband that she would not press for the ground of cruelty and he has accepted that the decree of divorce may be granted on the ground of desertion as he has deserted her since 21.11.2007 due to matrimonial difference and therefore, on the ground of desertion the appeal may be allowed. The deponent has also agreed to withdraw all the litigation whether civil and criminal including maintenance pending against respondent husband.”

A relevant extract from the affidavit Mark 'Y' filed by the respondent, reads as follows: -

“2. That due to the compelling circumstances, deponent deserted the appellant-wife because she has left the matrimonial house and did not come back. Except that the deponent was not having any option. Since 21.11.2007 both the parties are living separately. The appellant shall withdraw all the litigation civil, criminal or maintenance pending against the respondent as well as family members. The appellant shall not claim for any maintenance or any alimony, present, permanent or future. The minor daughter is in the custody of respondent-husband and shall remain in custody and maintained by the respondent-husband. The appellant shall not file any other fresh case/complaint in any manner against the respondent and his family members. Any maintenance order in favour of the appellant, if any by any Court shall be ceased to operate.

3. That the respondent has also agreed to withdraw all the litigations if any in court against the appellant-wife and there shall be no litigation pending between the parties. The minor daughter is in the custody of the respondent-husband and shall be maintained and brought up by the respondent. The respondent shall not file any other fresh case/complaint in any manner against the appellant and her family members.

4. That the deponent has agreed that the present appeal may be allowed on the ground of desertion and the appellant-wife has accepted that she would not press the ground of cruelty and would withdraw all the pending litigations whether civil, criminal including maintenance and therefore, the present appeal may be allowed on the ground of desertion as both the deponent and appellant-wife have been residing separately

since 21.11.2007 the day when he deserted his wife due to matrimonial differences.”

A perusal of the affidavits filed by the parties reveals that the allegation of desertion levelled by the appellant has been admitted by the respondent. The desertion having commenced more than two years before the filing of the petition, it is held that the respondent has deserted the appellant. The judgment and decree, dated 17.01.2014, passed by the Additional District Judge, Panchkula, is set aside and marriage between the parties i.e. Khushbu Rani, wife of Anand Kansal, daughter of late Sh.Ramesh Chander, resident of House No.1277, First Floor, Sector-19, Panchkula (appellant) and Anand Kansal, son of Sh.Jai Parkash, resident of House No.23, Ground Floor, N-1, Budh Vihar, Delhi (respondent), is dissolved by grant of a decree of divorce, on the ground of desertion, alone.

Parties shall be bound by the contents of their respective affidavits and obliged to perform their respective obligations namely withdrawal of all other litigation, complaints and petitions etc.

Decree sheet be drawn up accordingly.

We appreciate the efforts put in by counsel for the parties.

[RAJIVE BHALLA]
JUDGE

07.09.2015
shamsher

[NAVITA SINGH]
JUDGE