

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

FAO No. M-25 of 2015

DATE OF DECISION: January 21, 2015.

Ashok Kumar

....Appellant

VERSUS

Anupama Sharma

....Respondent

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

Present: Mr. Ajay Aggarwal, Advocate
for the appellant.

SNEH PRASHAR, J.

1. This appeal is filed by Ashok Kumar-appellant/petitioner assailing the judgment and decree dated 01.12.2014 passed by the learned Additional District Judge, Karnal in H.M.A case No.2 of 2014 dated 24.01.2012/05.09.2014 whereby his petition under Section 9 of the Hindu Marriage Act, 1955 (for short 'the act of 1955'), was dismissed.

2. The relevant facts which need elaboration are as under:

The marriage between the parties was solemnized on 29.10.2001 at Karnal according to Hindu rites and ceremonies. After the marriage they lived together as husband and wife. The marriage was consummated and a daughter namely Advitiya was born on 09.05.2006 out of their wedlock.

Appellant -Ashok Kumar averred that he and respondent-Anupma were in love since 1992 and had a long relationship of nine years. It was a dowry less marriage. The respondent proved to be hot tempered and

quarrelsome lady. She started creating mess in the joint family where his brother was also residing. In the first week of December, 2001, they shifted to a rented accommodation in Bank Colony, Karnal. After four years of marriage the respondent conceived but she got the pregnancy terminated without his permission. He suffered a set back and remained depressed by the act of the respondent. Since he was unable to work he left his bank job. After six months, when he came out of depression on counseling done by his family, he and the respondent started living happily and on 09.05.2006, the respondent gave birth to a female child.

The appellant alleged that the father of the respondent was not happy with the marriage and he always tried to degrade him and misguide the respondent. After some time the respondent under the wrongful advise of her parents started exerting pressure upon him to give them money and transfer his house in her name. As he was reluctant, the respondent left the matrimonial home and out of the joint locker held with HDFC Bank she took away all the gold, silver and diamond ornaments.

Despite requests by him she refused to return and asked him to come to her parental home. When he went, suddenly Kashmiri Lal (father) and Ankit (brother) of the respondent attacked and gave him merciless beatings. Being under the influence of her father the respondent got a false First Information Report dated 09.08.2010 under Sections

323,452 and 506 of the Indian Penal Code registered with the police. She also filed against him a complaint under the Protection of Women from Domestic Violence Act, 2005(for short 'the Act of 2005').

The dispute was compromised before the Mediation and Conciliation Centre, Karnal on 08.01.2011 and by virtue of the compromise an amount of Rs.13,72,000/- through cheque and an amount of Rs.5,50,000/- in cash were paid by him to the respondent. FDRs amounting to Rs.310825/- and Rs70,000/- had been issued by him in her favour, which were given to her for purchase of a plot. He then himself purchased a plot in the name of respondent by spending Rs. 8,00,000/- and they started living together with effect from 08.01.2011.

It was further the allegation of the appellant that in September, 2011 the respondent under the influence of her parents pressurized him to transfer the matrimonial house and some agriculture property in her name. When he refused to do so, on 28.09.2011 the respondent went for joining job in Dayal Singh Public School and did not return home thereafter. She left the matrimonial home without any rhyme or reason and refused to join his conjugal company. She filed a criminal complaint against him at women cell. The police on inquiry found that the respondent had taken money from him on account of compromise and the father of the respondent was not allowing her to return to the matrimonial

home. He went to the respondent to bring her back but she refused to accompany him. After few days he came to know that the respondent had filed a petition for divorce against him.

3. Further, elaborating his allegations the appellant submitted that the respondent used to comment on the status of his family claiming that she belonged to a royal family. During her stay with him at the matrimonial home whenever she was asked to perform the household affairs she felt uneasy and asked him to engage a servant for doing the work. Submitting that he had tried his level best to keep the atmosphere in the house as per liking of the respondent and to carry on the marital tie in a harmonious manner but the respondent under the complete influence of her parents had been behaving like a puppet in their hands. Although he had been trying to reconcile the dispute but the respondent had refused to join his conjugal company which necessitated filing of the present petition.

4. The respondent contested the petition and in the written statement filed by her preliminary objections with regard to maintainability of the petition in the present form, concealment of true and material facts and estoppel etc. were raised. She pleaded that the instant petition is a counter blast to the petition under Section 13 of the Act of 1955 filed by her.

Replying on merits, the respondent admitted inter-se relationship between the parties but denied that no dowry was given at the

time of her marriage. She alleged that her father spent Rs.10 lacs on the marriage and dowry. Prior to marriage she and the appellant had a relationship of five years and not of nine years. She denied that after four years of marriage she had conceived and aborted the pregnancy. Birth of a daughter to her from the loins of the appellant was admitted, but she denied that she had ever pressurized the appellant to give money to her parents or to transfer the house in her name. She also denied that she had removed gold, silver and diamond ornaments from the locker of the HDFC Bank. As regards the compromise dated 08.01.2011, she admitted that during proceedings in the complaint under the Act of 2005 filed by her a compromise had taken place by virtue of which a sum of Rs.23,02,825/- was paid to her by the appellant.

The respondent pleaded that the appellant had done M.A., and M.B.A. and had worked with Dhillon Cool Drinks Pvt. Ltd. Chandigarh, Bank of Punjab, Karnal, Ansal Housing Company, Indusind Bank, Narsi Village, Karnal and Kotak Mahindra Bank, Karnal on various posts from time to time but because of his misbehaviour with the senior and colleagues under the influence of liquor, his services were terminated every time. He was also habitual of coming home late in the night hours under the influence of liquor and whenever she questioned him he gave her severe beatings. He was not happy with the birth of daughter Advitiya.

She was employed as a teacher in Dayal Singh Public School, Karnal where on 28.09.2011 he came under the influence of liquor and hurled filthy abuses in front of school children and the staff. She then gave application dated 28.09.2011 at Police Post Sector-6, Karnal regarding the incident. The principal of the School also reported the incident to the police. The appellant was got medico-legally examined and challaned under Section 107/151 Cr. P.C. by the police. Prior to that on 07.08.2010, she was given severe beatings and was turned out of the matrimonial home. On 09.08.2010, the appellant came to her parental house in drunken condition and gave filthy abuses to her father. When she tried to stop him, he entered into scuffle and gave slaps and fist blows to her father. He also threatened to kill him and other family members. A first information Report No.655 dated 09.08.2010 under Section 323,452 and 506 of the Indian Penal Code was registered at Police station Civil Lines, Karnal in respect of the incident.

It was further mentioned by the respondent that with the consent of the appellant she had purchased a Flat in Alpha City, Gurgaon and they had paid Rs.12 lacs towards sale consideration. An amount of Rs.5,73,000/- was paid by her to the appellant for purchase of that plot. However the plot was sold off by the appellant for a sum of Rs.10 lacs and the money was kept by him. After 08.01.2011, the appellant started

torturing her by giving beatings and by taunting her for bringing insufficient dowry as well as dowry of low quality. He even remarked on her character.

On 03.08.2011, she was not allowed by the appellant to join the birthday ceremony of her niece. He once tried to commit suicide under the influence of intoxication by locking himself in his residential house on 31.08.2010.

Alleging that her father had convened a Panchayat on 02.10.2011 for compromise but the dispute could not be settled and therefore she had been residing with the parents since 28.09.2011, the respondent sought dismissal of the petition.

5. On the pleadings of the parties, following issues were settled by learned trial court:

1. Whether the petitioner is entitled to a decree for restitution of conjugal rights under Section 9 of the Hindu marriage Act on the ground mentioned in the petition?OPP
2. Whether the petition is not maintainable?OPP.
3. Whether the petitioner is estopped by his own act and conduct from filing the present petition.?OPR
4. Relief.

Both the parties adduced evidence in support of their respective contentions.

6. Trial Court having found that it is the appellant-husband who treated the respondent with cruelty, mentally as well as physically and that the appellant himself having failed to prove that respondent-wife had withdrawn her company from the company of the appellant without any reasonable cause and further that the petition under Section 9 preferred by the appellant being a counter blast to the divorce petition filed by the respondent-wife, dismissed the petition.

Feeling aggrieved by the judgment and decree dated 01.12.2014 passed by learned trial Court, the appellant has preferred the instant appeal.

7. We have heard the learned counsel representing the appellant and perused the record.

8. As the matter was opened for arguments learned counsel for the appellant argued that the marriage between the parties was an outcome of a love affair for nine years. However, the marital relations between them started souring when the father and brother of the respondent started intervening in their family matters. A false criminal case under Section 323, 452 and 506 of the Indian Penal Code was got registered by the respondent on 09.08.2010 against the appellant on the instigation of her father, but the First Information Report was quashed by the court of competent jurisdiction. After the respondent filed a petition under the

Domestic Violence Act, a compromise took place between her and the appellant on 08.01.2011, as was admitted by her also, and in pursuance of the compromise the appellant paid Rs.23 lacs to her. Therefore, all acts prior to 08.01.2011 stood condoned by virtue of the compromise between the parties. The first information report was also quashed by the court of competent jurisdiction on the basis of compromise. The respondent joined the conjugal company of the appellant but then in September, 2011 again under the influence of her parents she left the matrimonial home without any rhyme or reason. The appellant having failed by all other means to bring back the respondent to the matrimonial home had filed the instant petition for restitution of conjugal rights. His aim is only to save the marriage since there is a daughter also of the parties living with the respondent.

9. Admittedly the parties are living separately since 28.09.2011. The vital question posed for consideration is whether the appellant had left the conjugal company of the respondent without any rhyme or reason. To substantiate his allegations the appellant himself appeared in the witness box as PW2 and made a self serving statement. To corroborate his version he examined PW1 Ghansham. On the other hand, the respondent-Anupma appeared as RW1 and examined RW2-Sri Niwas Bhardwaj and her father RW3 Kashmiri Lal and tendered in evidence copies of various

applications, complaints, FIRs, DDRs, Calendras and statements of bank accounts as Mark R1 to Mark R43.

10. Scrutinizing the ocular and documentary evidence led by the parties learned trial Court held as under:

“18. The respondent Anupama while appearing in the witness box as RW1 has given details of several instances/incidents of cruelty committed by the petitioner by which he caused mental as well as physical harassment and cruelty to her. This witness while narrating the previous incidents committed by the petitioner causing mental as well as physical cruelty to her, has deposed that on 27.08.2011, the petitioner did not come to his house throughout the night and even no information was given to her. On the next day, when he returned to the house, he levelled certain allegations regarding her character by standing on the main door of the house in front of the neighbours and this created a tension in her mind and she could not call even her parents as he had openly threatened to kill her parents and other family members. She has further deposed that on 28.09.2011, the petitioner came to Dayal Singh Public School, Karnal where she was employed, under the influence of liquor and started giving filthy abuses in front of the school children and school staff. She then moved an application to Police Post Sector-6, Karnal in this regard and he was challaned under Section 107/151 Cr.P.C., (the copy of which is Mark-R-19). She also sent applications through registered post to the Deputy Commissioner, Karnal, Superintendent of Police, Karnal, National Human Rights Commission and National Women Commission, New Delhi. She has further narrated another incident of cruelty by petitioner committed on 09.08.2010 when on that day, the respondent came to her parental house in drunken condition and started giving filthy abuses to her father and also gave beatings to her father. Regarding this incident, FIR No.655 dated 09.08.2010 under Sections 323,452 and 506 of the Indian Penal code was registered at Police Station Civil Lines, Karnal (Copy of which is Mark-R-2). As per the version of the respondent, on 19.03.2011, the petitioner called her parents to his residence intentionally and threatened to kill them and she was not allowed to attend birthday ceremony of her niece on 03.08.2011 which was being celebrated

at the house of her parents. The respondent further narrated that the petitioner also tried to commit suicide under the influence of intoxicant by locking himself in his residential house on 31.08.2010 and 02.10.2011, her father convened a Panchayat at the house of the petitioner and tried to convince him for not treating her with cruelty and not to give physical beatings as well as to raise doubt regarding her character but he remained adamant. The testimony of the respondent has been fully corroborated by RW2 Siri Niwas and RW3 Kashmiri Lal, father of the respondent regarding the incidents of cruelty committed by the petitioner.

19. The instances/incidents committed by the petitioner as narrated by the respondent as RW1 which are supported by RW2 and RW3 and also by documentary evidence i.e. copies complaints/applications, FIRs and Calendras as referred to above, got registered by the respondent against the petitioner, clearly amount to mental cruelty meted to the respondent by the petitioner and as such, there is sufficient evidence on record led by the respondent to prove that the petitioner treated her with cruelty mentally as well as physically. In these circumstances, the petitioner has miserably failed to prove that the respondent has withdrawn her company from the company of the petitioner without any reasonable cause or excuse and rather, the evidence brought on record by the respondent clearly shows that the petitioner caused mental as well as physical cruelty to the respondent by committing various incidents, referred to above and turned her out from the matrimonial home and as there was sufficient ground and reason for the respondent to withdraw her company from the company of the petitioner.”

11. Learned counsel for the appellant failed to pin point any error or perversity in the findings of the trial Court emerging from appreciation of the evidence available on record. The respondent may have joined conjugal company of the appellant as a consequence to compromise between them on 08.01.2011 but that was not enough to conclude that all previous acts stood condoned. On 28.09.2011 the appellant under the influence of liquor went to the school where the respondent was teaching

and gave her filthy abuses in front of school children and the staff and on an application given by the respondent and the intimation sent by the Principal to the police, the appellant was apprehended and was got medico-legally examined and was challaned under Section 107/151 of the Code of Criminal Procedure. That amounted to reactivation of cruelties towards the respondent and with that his previous acts of cruelty of the appellant towards the respondent also stood revived and she became entitled to seek the legal remedy available to her.

12. It was rightly held by learned trial Court that the petition under Section 9 of the Act of 1955 was a counter blast to the petition for divorce filed by the respondent. Evidently, the respondent wife had not voluntarily withdrawn from the society of her husband, rather, it was due to the act and conduct of the husband that she was forced to leave the matrimonial home under painful circumstances.

13. Thus,concluding that the findings of the learned trial Court call for no intervention, the instant appeal being devoid of merit fails and is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

21.01.2015
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