

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-43 of 2015 (O&M)

Date of Decision: 2.2.2015

Krishan Lal

....Appellant.

Versus

Jaswinder Kaur

...Respondent.

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

PRESENT: Mr. Gagandeep Singh Chhina, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the husband against the judgment and decree dated 28.10.2014 passed by the Additional District Judge, Kurukshetra, whereby the petition filed by the wife under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce, was allowed.

2. Sans unessentials, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The respondent-wife filed a divorce petition, *inter alia*, pleading that the marriage of the parties was solemnized on 12.12.2009 at Kurukshetra according to Hindu rites and ceremonies. After the marriage, both the parties resided together as husband and wife at village Shadipur and cohabited as such. However, no child was born out of the said wedlock. The behaviour of the appellant and his family members was very cruel towards the

respondent and they used to quarrel with her on petty matters. The appellant at the instance of his parents, used to give merciless beatings to the respondent. The father of the respondent had spent more than ₹ 7/8 lacs on the marriage and had given sufficient dowry articles including the motorcycle but the appellant and his family members were not satisfied with the dowry articles and they started demanding car and a gold chain. In the first week of March, 2010, the father of the respondent paid a sum of ₹ 70,000/- to the appellant and his family members for gold chain but in spite of that, their behaviour remained rude and cruel towards her. Thereafter, the parents of the respondent again gave ₹ 1.5 lacs in the month of September, 2010 to the appellant and his parents but still they did not mend their ways. In the second week of January, 2011, the respondent was turned out from her matrimonial home by the respondent and his family members after giving merciless beatings to her. She got lodged FIR No. 351 dated 24.4.2011 under Sections 406, 498-A of the Indian Penal Code at Police Station, Model Town, Panipat against the respondent and his family members. Even the appellant with the help of his brother committed rape with Ms. Parvinder Kaur, younger sister of the respondent and also gave injuries to her and a complaint in this regard was also filed before the Superintendent of Police, Kurukshetra, however, no action was taken. Upon notice, the appellant contested the divorce petition by filing a written statement. Besides raising various preliminary objections, it was pleaded that he was ready and willing to keep the respondent in his house as his wife but the respondent refused to join his company. The respondent had left the company of the appellant of her own. The other averments made in the petition were denied and a prayer for dismissal of

the petition was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner is entitled to the decree of divorce under Section 13 of the Hindu Marriage Act from the respondent on the grounds mentioned in the petition? OPP
2. Whether the petitioner has no locus standi and cause of action to file the present petition? OPR
3. Whether the petition is not maintainable? OPR
4. Relief.

3. The respondent in support of her case, examined herself as PW1 and her father Mahender Singh as PW2 and also tendered documents in evidence Ex.P1 and Ex.P2. On the other hand, the defence of the appellant was struck off by the trial court vide order dated 20.10.2014 due to non-payment of arrears of maintenance.

4. At the very outset, it may be noticed that the trial court vide order dated 6.2.2014, held that the wife was entitled to ₹ 10,000/- per month as maintenance pendente lite w.e.f. 9.5.2013, i.e. from the date of application, besides litigation expenses of ₹ 5000/-. Against the said order, the appellant filed revision bearing CR No. 1935 of 2014 and this Court vide order dated 22.9.2014 disposed of the revision petition on the statement of the counsel that the appellant would make part payment to the extent of 50% or more before the court below. However, out of the total maintenance allowance of ₹ 1,85,000/- due towards the appellant, he had not made the payment to the respondent and had, thus, disobeyed the order of this Court as well as the trial court. Accordingly, the trial court vide order dated 20.10.2014 struck off the defence of the

appellant.

5. The trial court on appreciation of evidence led by the respondent held that there was sufficient evidence on the file that the respondent was subjected to cruelty by the appellant for demand of dowry and, therefore, she was entitled to a decree of divorce from her husband on that ground. Accordingly, the trial court vide judgment and decree dated 28.10.2014 allowed the divorce petition and dissolved the marriage between the parties by a decree of divorce. Hence, the present appeal.

6. Learned counsel for the appellant submitted that the trial court had wrongly struck off the defence of the appellant due to non-payment of maintenance as he was ready to keep the respondent with him. It was further contended that the appellant never treated the wife with cruelty and false allegations were levelled by the respondent-wife.

7. The twin issue that arises for consideration in this appeal is summarized as under:-

- (i) Whether the trial court was justified in striking off the defence of the appellant for non-payment of interim maintenance?
- (ii) Whether the appellant had treated the respondent-wife with cruelty?

8. After hearing learned counsel for the appellant, we do not find any merit in the appeal. Taking up first issue, 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.”

9. 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.

10. 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.”

11. 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.”

12. 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.”

13. 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.**

14. Thus, the defence struck off vide order dated 20.10.2014 by the trial court for non-compliance of order of maintenance pendente lite was justified. The trial court had rightly ignored the defence of the appellant.

15. Examining the second issue, it may be noticed that the respondent in her testimony as PW1 had deposed that the appellant had deserted her without any reasonable cause and excuse for two years from the second week of January 2011 when she was turned out of her matrimonial home. From the facts and the evidence on record, it was clear that the appellant was not interested in living with the respondent as he got dismissed in fault the petition filed by him under Section 9 of the Act vide Ex.P2 dated 16.7.2012. The respondent was living separately from the appellant since January, 2011 and there was no possibility for reconciliation between the parties. The divorce petition was filed on 9.5.2013. Therefore, the statutory period of two years immediately preceding the presentation of the petition to constitute desertion had expired. In so far as ground of cruelty is concerned, the respondent deposed that during the period she remained in the company

of the appellant, the appellant had been treating her with cruelty and giving beatings as well. To establish this claim, she relied upon final report Ex.P1 filed in FIR No. 351 dated 24.4.2011, under Sections 406/498-A of the Indian Penal Code. The respondent deposed that the behaviour of the appellant and his family members from the inception of the marriage was very cruel and harsh towards her. There was an allegation of committing rape by the appellant of the sister of the respondent. Since the defence of the appellant was struck off by the trial court, the evidence led by the respondent remained unchallenged and unrebutted. Keeping in view the facts and circumstances of the case, the trial court had rightly held that there was sufficient evidence that the respondent was subjected to cruelty by the appellant for demand of dowry and, therefore, she was entitled to a decree of divorce. The relevant findings recorded by the trial court read thus:-

“9. Now so far as the ground of cruelty is concerned, an act of physical violence by one spouse to another resulting injury to body, limb or health or causing reasonable apprehension of the same have been traditionally considered as cruelty. The injuries on the person of a spouse though may not be a very serious as to call for their medical treatment, yet the same would amount to an act of cruelty. Section 13(1) (ia) of the Hindu Marriage Act says that any marriage may on a petition be dissolved by a decree of divorce on the ground that the other party has after the solemnisation of the marriage treated the petitioner with cruelty. The petitioner when stepped in the

witness box as PW1 has asserted that during the period she remained in the company of the respondent, she was beaten, maltreated and subjected to cruelty by the respondent, her husband. To substantiate her pleas, the petitioner has placed and proved on the file certified copy of a final report as Ex.P1 in a case bearing FIR No.351 dated 24.4.2011 under sections 406/498-A IPC, Police Station, Model Town, Panipat, so registered against the respondent which is pending adjudication in the Court of learned Additional Chief Judicial Magistrate, Panipat and the next date of hearing in the said case is 19.12.2014. From the aforesaid facts, it is apparent that the petitioner has not condoned the acts of cruelty of her husband i.e. the respondent. While highlighting the acts of cruelty of the respondent, the petitioner has averred that the behaviour and attitude of the respondent and his family members from the inception of the marriage was very cruel and harsh towards her. Even the petitioner has levelled allegation of committed rape of her sister by the respondent which is a very serious matter. From the facts, it appears that due to the conduct of the respondent, the relations between the parties have deteriorated to such an extent that it has become impossible for the petitioner to live with the respondent without mental agony, torture or distress.

The testimony of the petitioner has also been corroborated by PW2 Mahender Singh, father of the petitioner. The evidence so led on the file on behalf of the petitioner has remained unchallenged and unrebutted on the part of the respondent and as such, there is no reason to disbelieve the unrebutted evidence of the petitioner. In this way, there is sufficient evidence on the file to hold that the petitioner was also subjected to cruelty by the respondent, her husband, for demand of dowry and she is thus entitled for a decree of divorce from her husband on the ground of cruelty.”

16. The findings recorded by the trial court have not be shown to be erroneous or perverse in any manner being based on misappreciation or misreading of evidence on record which may warrant interference by this Court. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 2, 2015
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(SNEH PRASHAR)
JUDGE