

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 68 of 2015 (O&M)

Date of Decision: 24.2.2015

Om Parkash alias O.P.

....Appellant.

Versus

Smt. Neeru Bala

...Respondent.

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

PRESENT: Mr. Lajpat Sharma, Advocate for
Mr. Parvesh Sachdeva, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the appellant-husband against the judgment and decree dated 18.3.2013 passed by the District Judge, Sirsa, whereby the petition filed by the respondent-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 unessential, the facts relevant for disposal of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 1.12.2002 in accordance with Hindu rites and ceremonies at Sirsa. The parents of the respondent had spent a sum of ₹ 5 lacs in the marriage. After the marriage, the parties lived together as husband and wife and cohabited as such at Fazilka, District Ferozepur and out of the said wedlock, two children, namely, Himanshu and Lavish were born. The children are residing with the

respondent. After the marriage, the appellant and his parents were not satisfied with the dowry articles given in the marriage and they started taunting her for bringing inadequate dowry. They used to harass and humiliate her and used to turn her out of the matrimonial home after giving beatings. She came back to the matrimonial home with the intervention of panchayat. In September, 2003, the respondent was having pregnancy of seven months and on her asking for ornaments, she was given beatings by the appellant. On 27.11.2003 she was turned out of the matrimonial home and she gave birth to a child in her parental house. After one month of the birth of child, a panchayat was convened wherein the appellant and his family members assured that they would not harass the respondent. However, in April, 2004, the brother of the respondent took her at her matrimonial home. Her parents had given gold ornaments to the appellant on the occasion of birth of child. After few days, the appellant and his family members again started harassing and humiliating the respondent. On 7.2.2006, in the panchayat convened at Fazilka, the appellant had again assured not to consume liquor and not to misbehave with the respondent. The parents of respondent gave gold ornaments and clothes to the appellant and his family members on the occasion of birth of a second child on 18.5.2006. The behaviour of the appellant and his family members did not change and they started demanding ₹ 50,000/- from the respondent and on her refusal, she was given beatings. She was turned out of the matrimonial home on 9.8.2006 and since then she was residing with her parents along with her children. Accordingly, she 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 appellant by

filing a written statement. The averments made in the petition were controverted and a prayer for dismissal of the same was made. The defence of the appellant was struck off by the trial court vide order dated 9.1.2013 due to non-payment of interim maintenance. Thereafter, the appellant was proceeded against exparte vide order dated 13.2.2013.

3. To prove the averments made in the petition, the respondent herself appeared as PW1 and tendered into evidence her affidavit as Ex.PW1/A. She also examined her brother Manish as PW2 who tendered into evidence his affidavit Ex.PW2/A and Parveen as PW3 who also tendered his affidavit as Ex.PW3/A.

4. The trial court on appreciation of evidence produced on record allowed the divorce petition vide judgment and decree dated 18.3.2013 holding that the respondent was treated with cruelty by the respondent and dissolved the marriage between the parties on the ground of cruelty. Hence, the present appeal.

5. Learned counsel for the appellant submitted that in fact the respondent herself neglected and deserted the appellant as she had left his company without any excuse in the year 2006. It was further submitted that the appellant went to the house of the respondent to bring her back but he was not allowed to meet the respondent and his sons. It was urged that the appellant filed a petition under Section 9 of the Act for restitution of conjugal rights which is pending adjudication. It was also contended that the respondent left the matrimonial home on her own and there was no ground to prove cruelty.

6. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

7. The Apex Court in **Vinita Saxena v. Pankaj Pandi, (2006) 3**

SCC 778 while examining legal proposition on the aspect of cruelty had observed as under:-

“It is settled by catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the Section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

The word 'cruelty' has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

8. Examining the factual scenario herein, it may be noticed that the respondent in her testimony as PW1 had reiterated the facts as mentioned in the divorce petition. PW2 Manish, brother of the respondent and PW3 Parveen, had categorically deposed about the maltreatment meted out to the respondent by the appellant and also turning her out of the matrimonial home for not fulfilling the demand of dowry. The evidence led by the respondent remained unrebutted and unchallenged. The defence of the appellant was struck off by the trial court vide order dated 9.1.2013 due to non-payment of interim maintenance. Further, he was proceeded against exparte vide order dated 13.2.2013. The only conclusion on the appreciation of evidence is that the respondent was treated with cruelty.

9. In view of the above and the findings recorded by the trial court which could not be demonstrated to be erroneous or perverse being based on misappreciation or misreading of evidence in any manner, no interference is called for by this Court. Consequently, the appeal being devoid of any merit is hereby dismissed.

10. There is a delay of 614 days in filing the present appeal. An application bearing CM No. 4049-CII of 2015 has been filed for condonation of 614 days' delay in filing the appeal. After hearing learned counsel for the appellant, no ground for condonation of delay is made out. Accordingly, the application is also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 24, 2015
gbs

(SNEH PRASHAR)
JUDGE