

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5-M of 1994 (O&M)

Date of decision : January 07, 2016

Lakhvinder Kaur

.....Appellant

Versus

Gurmel Singh

....Respondent

**CORAM:- HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Siddharth Sharma, Advocate
for the appellant.

None for the respondent.

LISA GILL, J.

The appellant – Lakhvinder Kaur being aggrieved of judgement and decree dated 23.10.1993, passed by the learned Additional District Judge, Faridkot allowing the petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as an 'Act') for dissolution of their marriage, has preferred this appeal.

Brief facts of the case are that marriage between appellant and respondent – Gurmel Singh was solemnised in December, 1972 at village Maur Charat Singh, District Bathinda. Two sons were born out of this wedlock. One of them unfortunately

passed away soon after his birth. The second son Soma Singh is living with the appellant. The respondent-husband preferred a petition under Section 13 of the Act, for dissolution of their marriage in August, 1992 on the ground that appellant – wife has deserted him without reasonable excuse or cause and despite attempts to bring her back, she did not return, therefore, he initially preferred an application under Section 9 of the Act for decree of restitution of conjugal rights. The petition was contested by the appellant but decree dated 07.05.1982 accepting the petition under Section 9 of the Act was passed by the learned Additional Senior Sub Judge, Faridkot. The allegations of adultery and misappropriation levelled by the appellant in these proceedings were found to be false. She also filed a complaint under Section 406/34 IPC, which was dismissed. After passing of decree dated 07.05.1982 (Ex. A1), under Section 9 of the Act, all attempts to bring the appellant back to matrimonial home failed. She did not comply with decree Ex. A1, and never cohabited with her husband compelling the respondent to file a petition under Section 13 of the Act for dissolution of the marriage.

The appellant–wife while contesting the petition for divorce denied the allegations against her as a cooked up story and took a stand that respondent- husband never approached her to join his society. It was she who took an initiative in February, 1992 by taking a Panchayat but he refused to rehabilitate her and their son Soma Singh. Infact, respondent – Gurmel Singh has an illicit relationship with one Harmander Kaur, daughter of Gurbax Singh, who was living with him. One child was born out of the said illicit

relations. She could not comply with decree dated 07.05.1982 because of non co-operation on the part of respondent and he should not be permitted to take advantage of his own wrong in view of Section 23 (1) (a) of the Act.

Learned trial Court on considering the pleadings framed the following issues:-

1. Whether the respondent deserted the petitioner without reasonable cause as alleged? OPP
2. Relief.

On consideration of entire facts and circumstances of the case as well as evidence on record, learned trial Court concluded that the appellant – wife had indeed deserted her husband without reasonable cause and had refused to comply with decree dated 07.05.1982 passed under Section 9 of the Act. Hence aggrieved the present appeal has been preferred by the appellant wife.

Learned counsel for the appellant vehemently argues that once the appellant was not able to comply with decree dated 07.05.1982 due to conduct and behaviour of the respondent-husband, appellant cannot be made to suffer on this count. The respondent cannot be allowed to take advantage of his own wrong. He relies on a decision of the Hon'ble Supreme Court in **Chetan Das versus Kamla Devi 2001 (4) SCC 250** and a judgment of a Full Bench of this Court in **Bimla Devi versus Singh Raj 1977 (1) ILR (Punjab) 765.**

Learned counsel has made a valiant effort to argue that respondent – Gurmel Singh, AW1 in his testimony states that he was

treated with cruelty after passing of the decree and furthermore once it is admitted that he took no steps for execution of the decree dated 07.05.1982 under Section 9 of the Act, it is a clear indication of lack of bona fides on the part of the respondent to rehabilitate the appellant. The appellant was unable to join the company of the respondent due to the circumstances created by the respondent. In this situation, it is prayed that decree of divorce granted in respondent's favour be set aside.

We have heard learned counsel for the appellant and gone through the record.

Learned counsel for the appellant is unable to point out any evidence on record, which would prove that appellant was not able to join the company of her husband due to an act/misconduct on his part. A perusal of Ex. A1, i.e. judgment dated 07.05.1982, under Section 9 of the Act reflects the plea of the appellant that her husband is living in open adultery. The allegation has been held to be an afterthought and a cooked up story as her allegations remain unsubstantiated. It was specifically held that appellant wife left the company of her husband without any reasonable cause. The same allegations were levelled by her in the present proceedings, under Section 13 of the Act but once again remain unsubstantiated. It was rightly held, by the learned trial Court, that appellant has deserted the respondent without reasonable cause and that she refused to comply with decree dated 07.05.1982, passed under Section 9 of the Act. The contention of learned counsel for the appellant that provisions of Section 23 of the Act are applicable in the present case is

unacceptable in the present factual matrix.

The argument that the decree under Section 9 was never executed by the appellant is devoid of any merit, hence unacceptable. A Full Bench of this Court in Bimla Devi's case (supra) has clearly observed that only a symbolic execution of a decree, is provided for. There is no provision by which the physical custody of the spouse who has suffered the decree can be made over to the spouse who obtained the decree for restitution of conjugal rights. Thus, it cannot be said that lack of bonafides on the part of the respondent is reflected due to this reason. The respondent-husband has succeeded in proving desertion on the part of the appellant, who has been unable to prove any reasonable or sufficient cause to withdraw from the company of the appellant.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned judgment and decree which calls for interference by this Court.

Consequently, this appeal is dismissed.

RAJIVE BHALLA
JUDGE

LISA GILL
JUDGE

January 07, 2016
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