

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

FAO No. 7251 of 2011 (O&M)

Date of decision : February 29, 2016

Amit Kaushik

.....Appellant

Versus

Monika Gaur

....Respondent

FAO No. 563 of 2012 (O&M)

Monika Kaushik

.....Appellant

Versus

Amit Kaushik

....Respondent

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

Present: Mr. Sanjay Vashisht, Advocate
for the appellant (in FAO No. 7251 of 2011)
for the respondent (in FAO No. 563 of 2012)

Mr. Manoj Kaushik, Advocate
for the respondent (in FAO No. 7251 of 2011)
for the appellant (in FAO No. 563 of 2012)

LISA GILL, J.

This judgment shall dispose of FAO Nos.7251 of 2011
(Amit Kaushik versus Monika Gaur) and 563 of 2012 (Monika
Kaushik versus Amit Kaushik) as they arise out of common judgment
and decree dated 23.11.2011 passed by the learned District Judge,
Family Court, Faridabad.

FAO No. 7251 of 2011 has been preferred by the appellant - husband Amit Kaushik being aggrieved of the dismissal of his petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as an 'Act') for grant of decree of divorce on the grounds of cruelty and desertion by his wife – Monika Gaur, vide the impugned judgment and decree.

FAO No. 563 of 2012 has been preferred by the appellant – wife Monika Kaushik being aggrieved of dismissal of her petition under Section 9 of the Act wherein she has prayed for restitution of conjugal rights.

The facts of the case, as revealed in the petition filed by Amit Kaushik under Section 13 of the Act, are that marriage between the parties was solemnised on 20.01.2005 as per Hindu rites and ceremonies. Amit Kaushik was working as Assistant Manager, EHC in Night Frank India Limited having its office at Gurgaon. No child was born out of this wedlock. The appellant – husband being the only son of his widowed mother resided alongwith his wife, mother, elder sister and her two children at House No. 1164/8, Sector 8, Faridabad. The respondent - wife lived with him upto 09.03.2005 i.e. for about 1½ months after their marriage. She went to her parental home after their honeymoon for about a week but on returning back to Faridabad, the respondent made their life miserable by objecting to his sister residing in their house. The respondent misbehaved with the appellant's mother and sister, never prepared food or tea for the family or the guests, and neither helped his mother in the household work by asserting that she was not a servant of the house. The

appellant used to hand over his salary to his mother to which a strong objection was raised by the respondent. Relations between the parties became strained and in order to save their matrimony, the appellant decided to reside in Gurgaon. A flat was taken on rent at Kendria Vihar Sector 53, Gurgaon where the parties started to reside together. However, their relations took a turn for the worst with the respondent declaring that the house at Faridabad be transferred in her name. The respondent raised baseless allegations against the appellant's character asserting that he had illicit relations with one Richa, who was working in his Company as a House Keeping Executive. The appellant had to face extreme humiliation on this account in society as well as in his Company as there was no truth in such allegations. He had to ultimately leave his job with the above said Company. The appellant joined as a Senior Officer, Fire Safety with DLF on 11.04.2005 but the respondent instead of mending her ways stated that she did not want to live with the appellant. It is averred that the respondent threatened to marry a person called Sachin if the house at Faridabad was not transferred in her name. The respondent tried to flee from the house and in order to stop her the appellant set ablaze his clothes with a lighter. The appellant came under great mental stress due to cruelty meted out by the respondent and he had to leave his job at DLF in June, 2005 due to this reason. He joined with The Times of India as Assistant Manager, Fire and Safety on 01.07.2005 and due to a condition of his service, the appellant had to reside at Vaishali, Ghaziabad i.e. within 5 km radius of his office. Consequently, he took up residence alongwith the

respondent at G-803 Neel Padam Kunj, Vaishali, Ghaziabad. The respondent still did not mend her ways and started raising false allegations of illicit relations of the appellant with the girl called Tamanna and defamed him in the colony. She again pressurised him to transfer the house at Faridabad in her name. It is averred that at midnight on 15.08.2005 when the appellant returned home from duty, the respondent's mother, father, maternal uncle, aunt, uncle etc. were found loading the household articles of the parties in a truck with the help of labour. The respondent informed the appellant that she would live at the house of the appellant's mother at Faridabad and the appellant should accompany her. When the appellant protested, he was forcibly taken in a vehicle and brought to Faridabad and their articles/household goods were placed on the first floor of his mother's house. All efforts on the part of the appellant to persuade the respondent to reside with him at Vaishali, Ghaziabad came to naught and she threatened that in case the house is not transferred in her name, she would lodge a false case of dowry against the appellant and his family members. A complaint was submitted before the SSP, Faridabad by the appellant's mother. The appellant was disowned by his mother and also faced various illnesses due to the situation created by the respondent, who is residing at her parental home at Vasant Nagar, New Delhi since December 2005. The respondent has wilfully withdrawn from matrimony without any reasonable cause, thus, the appellant prayed for a decree of divorce on the grounds mentioned in the petition.

The respondent – wife while admitting the factum of

marriage has refuted all allegations raised against her. It is averred that she is a simple, highly educated, soft spoken lady while the appellant is a habitual drug addict. He used to imbibe smack, liquor etc., come back home late at night in a drunken condition and subjected the respondent to physical abuse. The appellant demanded ₹10 lakhs from her parents by threatening that he would commit suicide in case his demand is not fulfilled. All allegations of not preparing meals, tea etc. for the appellant, relatives and guests were denied. It was alleged that the appellant's mother and sister interfered in the married life of the parties and subjected the respondent to harassment and cruelty alongwith the appellant.

The respondent has denied that she insisted on living at Faridabad or for transfer of the house at Faridabad in her name. She also denied levelling of any allegations of illicit relations of the appellant with any other girl. It is pleaded that it is respondent who was turned out of her matrimonial home on 20.12.2005, especially at the behest of his maternal aunt (*massi*) and uncle (*mausa*). The respondent, thus, prayed for dismissal of the petition under Section 13 of the Act.

The wife – Monika in her petition under Section 9 of the Act while giving the facts regarding the marriage between the parties on 20.01.2005 pleaded that about ₹20 lakhs was spent by her parents on the marriage. She was subjected to maltreatment and misbehaviour at the hands of her husband, mother-in-law and sister-in-law. Her husband was addicted to alcohol and other drugs. He used to come home late at night in a drunken condition and used to

beat her mercilessly while using filthy language. A demand of ₹10 lakhs was allegedly raised by the husband and on her/her parents' inability to fulfil the demand, she was threatened and harassed by her husband and his family members. It was averred that Amit Kaushik used to threaten Monika that in case his demand of ₹10 lakhs is not fulfilled he would commit suicide. Monika was turned out of the matrimonial home a number of times. All efforts to reconcile the matter failed and she was ultimately turned out of her matrimonial home on 20.12.2005. Even thereafter, effort was made to reconcile the matter by involving respectable persons but to no avail. Amit Kaushik instituted a petition under Section 13 of the Act seeking divorce on false grounds of desertion and cruelty and since then she was residing with her parents. It was further pleaded that she still wishes to resume matrimony with her husband, who has withdrawn from her company without reasonable excuse.

A written statement was filed by the husband denying the allegations against him and his family members, virtually reiterating the stand he had taken in the petition under Section 13 of the Act.

The petition under Section 13 of the Act filed before the Court of learned Civil Judge (Senior Division) Ghaziabad was transferred to the Family Court at Faridabad by the Hon'ble Supreme Court vide order dated 08.01.2007.

The petition under Section 9 of the Act filed by the wife - Monika as well as the petition under Section 13 of the Act filed by the husband- Amit were directed to be consolidated vide order dated 25.07.2009 by the learned trial Court as the dispute was between the

same parties and a common question of law and fact was involved. Consolidated issues were directed to be framed.

Both the petitions i.e. the petition seeking divorce filed by the husband and the petition for restitution of conjugal rights filed by the wife were again directed to be reconsolidated vide order dated 03.08.2010 by the trial Court with a further direction that the petition under Section 13 of the Act titled Amit Kaushik versus Monika be treated as the main petition and the following consolidated issues were framed:-

1. Whether the respondent treated the petitioner with cruelty, if so, to what effect?OPP (husband)
2. Whether the petitioner-husband has withdrawn himself from the petitioner's society without any reasonable excuse, if so, to what effect?OPR (wife)
3. Whether the petition under Section 13 of Hindu Marriage Act is not maintainable?OPR(wife)
4. Whether the petition under Section 9 of Hindu Marriage Act is not maintainable?OPP (husband)
5. Whether the petitioner-husband has no cause of action for filing the present petition under Section 13 of Hindu Marriage Act is not maintainable?OPR (wife)
6. Whether the respondent-wife has no cause of action for filing the petition under Section 9 of Hindu Marriage Act is not maintainable?OPP (husband)
7. Relief.

Prior to consolidation of both the petitions, Hemlata PW1, Sudershan Sharma PW2, Amit Kaushik (husband) PW3 and Ajay Pannu PW4 were examined in support of the petition under Section 13 of the Act filed by the appellant – husband seeking a decree of divorce.

Monika Kaushik RW1, Ravinder Sandilya RW2, Om Parkash RW3, Devinder Pal Sharma RW4 were examined by the respondent - wife to support her case. In the petition under Section 9 of the Act, Monika (wife) PW1, Om Parkash PW2, Ravinder Sandikya PW3 and Devinder Pal Sharma PW4 were examined. It was observed by the learned trial Court at the time of consolidation of the issues on 03.08.2010 that no further evidence is required to be adduced and the evidence already adduced by the petitioner-husband be read in respect to these issues.

Learned trial Court on considering the pleadings, evidence on record as well as the entire facts and circumstances has dismissed both the petitions i.e. the petition filed by the husband under Section 13 of the Act seeking a decree of divorce as well as the petition filed by the wife under Section 9 of the Act for restitution of conjugal rights while holding that the husband has failed to prove the allegations of cruelty raised against the wife and on the other hand the petition for restitution of conjugal rights has been dismissed while holding that the wife has failed to prove that her husband has withdrawn himself from her society. She has failed to prove how and in what manner she was thrown out of the matrimonial home if at all, by the husband. Thus, aggrieved, both the parties have assailed the judgment and decree dated 23.11.2011.

Learned counsel for the appellant – husband in FAO No. 7251 of 2011 vehemently argues that there is sufficient evidence on record to prove cruelty at the hands of respondent – wife. The respondent was always interested in the property of the appellant's

mother and was never interested in maintaining matrimony. The respondent lived with the appellant for about 1½ months after the marriage till 09.03.2005. After their honeymoon, she left for her paternal home for about a week and on her return she made the appellant's life miserable. The respondent objected to his sister residing in the house while asserting that the house belonged to her. The respondent misbehaved with his mother and sister, never prepared breakfast, food, tea etc. for the family or guests while declaring that she was not a servant in the house. In a bid to save their matrimony, the appellant shifted to Gurgaon and started residing there alongwith the respondent from 10.03.2005. However, the respondent expressed her desire that the house at Faridabad be transferred in her name and further raised baseless allegations of the appellant having illicit relations with one Richa working as a House Keeping Executive in his employer company. The appellant had to change his job twice due to the unjustified conduct of the respondent. The appellant was subjected to physical and mental cruelty by the respondent. He ultimately started residing in Vaishali Ghaziabad on joining the times of India as Assistant Manager, Fire and Safety. The respondent's behaviour still did not improve and she raised fresh allegations of illicit relations of the appellant with one Tammana and started defaming him in the colony. The respondent again pressurised the appellant to have his mother's house at Faridabad transferred in her name, otherwise, she would lodge a false case of cruelty against the appellant and his family members. The household articles were removed from Ghaziabad and taken to Faridabad at the

behest of the respondent and her family members and the appellant was also taken forcibly from Ghaziabad to Faridabad on 15.08.2005. The appellant's mother submitted a complaint before the SSP, Faridabad and proceeded to disown him as well as the respondent. Furthermore, the respondent left the matrimonial home of her own accord in December, 2005 and has deserted the appellant.

It is vehemently argued that once the learned trial Court has held that the respondent – wife has been unable to prove that the appellant had withdrawn from her company or that she was thrown out of her matrimonial home thereby dismissing her petition under Section 9 of the Act, there is no justifiable reason for denying the decree of divorce to the appellant. It is further submitted that the appellant has been acquitted in the case arising out of FIR No. 80 dated 20.02.2006 under Section 498A, 406, 506 IPC registered at Police Station Sector 7, Faridabad vide judgment dated 13.01.2004. The appeal filed by the respondent against his acquittal has also been dismissed vide judgment dated 07.05.2015. A petition filed by the respondent under the Protection of Women from Domestic Violence Act, 2005 has also been dismissed on 10.03.2015. Learned counsel for the appellant – husband submits that it is the respondent, who is guilty of desertion as she has admittedly left the matrimonial home on her own in December, 2005. It is submitted that the parties have been living separately for about ten years and there being no possibility of their living together now, a decree of divorce should be granted in the appellant's favour. It is, thus, prayed that the impugned judgment and decree dismissing the

petition under Section 13 of the Act be set aside and decree of divorce be granted to the appellant.

Learned counsel for the respondent – wife, while supporting the dismissal of the petition under Section 13 of the Act submits that the evidence on record in fact reflects acts of cruelty on the part of the appellant himself. An unhealthy environment was created by the appellant and her in-laws in the matrimonial home and the respondent was ultimately thrown out of the matrimonial home. It is admitted by the appellant's own witnesses that he was habitual of imbibing liquor. The appellant's own maternal grandfather has deposed in favour of the respondent. Learned trial Court has, thus, grossly erred in dismissing the wife's petition under Section 9 of the Act. It is submitted that the learned trial Court has proceeded in a paradoxical manner while dismissing her petition inasmuch as the trial Court on one hand has held that the appellant cannot take advantage of his own wrong and mere wear and tear of married life cannot amount to cruelty on the part of the respondent while on the other hand has refused to grant restitution of conjugal rights in the wife's favour. It is, thus, prayed that the appeal filed by the appellant-husband be dismissed and the appeal filed by the wife be allowed, thereby allowing her petition under Section 9 of the Act praying for restitution of conjugal rights.

We have heard learned counsel for the parties and have perused the pleadings as well as the evidence on record. It is not in dispute that the parties and their family members were known to each other prior to solemnisation of the marriage of the parties on

20.01.2005, being interrelated to each other. The wife - Monika is the daughter of brother-in-law (*Sadu*) of the appellant - husband's maternal uncle (*mama*). The appellant's maternal aunt (*maami*) and the respondent's mother are real sisters. Om Parkash RW3, is the maternal grandfather of the appellant - husband and was admittedly the mediator in the marriage alongwith the appellant's maternal uncle (*mama*) i.e. RW4 Devinder Pal Sharma. The marriage between the parties was solemnised on 20.01.2005. They admittedly lived together at Faridabad, with the appellant's mother, sister and her children till 10.03.2005, when they shifted to Gurgaon. Thereafter, the parties shifted to Vaishali, Ghaziabad allegedly on account of exigencies of the appellant husband's service though there is no documentary evidence to this effect. The allegation raised by the appellant - husband that the respondent was solely concerned with the transfer of House No. 1164/8, Sector 8, Faridabad in her name, is not substantiated by any cogent evidence on record. The house in question belongs to the appellant's mother. The civil suit Ex. DW5/D filed by the respondent - wife on 06.06.2006 is a suit for permanent injunction claiming right of residence at Faridabad. She has not staked a claim to the property in any other capacity. The respondent was non-suited on the ground that the said house, belonging to the appellant's mother, is not covered under the definition of 'shared household' and the respondent could claim residence only at the accommodation at Ghaziabad, rented by the appellant – husband.

The deposition of RW3 Om Parkash, the real maternal grandfather (*nana*) of the appellant-husband is extremely relevant.

He has categorically deposed that Monika was not even permitted to talk on the phone or visit his house and was ultimately forced to leave her matrimonial home. Despite being the appellant - husband's real maternal grandfather, he has not denied the appellant being a drunkard or afflicted with bad habits. It is further revealed that about one month after the marriage, the sons of Om Parkash were not permitted to visit the appellant. In normal circumstances, a person would never depose against his own grandson and daughter but RW3 Om Parkash has specifically supported the case of the respondent – wife. Similarly RW4 Devinder Pal Sharma i.e. the appellant – husband's maternal uncle (mama) has also supported the case of the respondent - wife. The discrepancies pointed out in the evidence of RW3 and RW4 to the extent of visiting of the appellant's house by RW4, apart from being suitably explained by Devinder Pal Sharma that he visited the parties house when called on arising of a dispute, is neither relevant nor does it effect the veracity of their testimonies in the given situation where the parties are closely interrelated.

Furthermore, the evidence of the appellant's own witness i.e. PW4 Ajay Pannu proves the conduct of the appellant. In respect to the incident, which occurred in the last week of April, 2005, PW4 Ajay Pannu admitted that the appellant tried to hit himself by striking his head against wall, though the suggestion that the appellant was under influence of liquor at that time has been denied. It is proved on record that the appellant was habitual of drinking. He was brought in a drunken condition on 15.08.2005 from Ghaziabad to Faridabad. It

is not as if the appellant was forcibly brought by strangers, real maternal uncle and other relatives of the appellant had brought him to Faridabad on 15.08.2005 when admittedly elaborate security arrangements were in place in the city, being Independence Day. The appellant's sister PW1 Hemlata has admitted that her maternal uncle Dharamjit had brought the luggage of the parties from Vaishali to Faridabad on 15.08.2005. PW2 Sudershan Sharma, the appellant's mother has admitted that all household articles of the parties were brought to Faridabad from Ghaziabad by her own brothers and other relatives. The appellant's mother has further admitted that various articles like air conditioner, fridge, car etc. were given in dowry at the time of marriage and all these articles found their way back to her house in Faridabad though it is stated that the respondent took them all back again. PW2 Sudershan Sharma also admits that the respondent was permitted to stay on the first floor alongwith herself, her daughter and her children. The ground floor was rented out and all of them resided on the first floor. A difficult situation was obviously created by the appellant – husband to such an extent that even his own maternal grandfather and uncle were constrained to depose against him. The pleading to the effect that the appellant tried to set himself on fire to stop the respondent – wife from leaving the house is a reflection upon his temperament. There is no evidence on record to show that the appellant suffered from any mental stress or illness as alleged by him on account of any action on the part of the respondent – wife. Though it is pleaded that the appellant's mother had submitted a complaint to the police but no details of the same

are forthcoming. PW2 Sudershan Sharma, the appellant's mother refers to a complaint made by her on 10.10.2005 and not on 04.12.2005, however, no such document is available on record. Similarly, there is no evidence on record to prove that the appellant was ever disowned by his mother. The appellant's mother while deposing as PW2 has admitted that she disposed of a house in Sector 3 after the marriage of the parties on the pretext that she required money. While denying that she sold the agricultural land, it is admitted by PW2 that she mortgaged the agricultural land in question as the money was required by her. It is not denied that ₹3 lakhs were received by her from her father, though denied to have been received on account of the settlement of the respondent. Testimony of PW2 Sudershan Sharma lends credence to the contentions of the respondent.

Another relevant factor to be noted is that no complaint whatsoever was filed by the respondent - wife till the filing of the divorce petition on 02.02.2006. It is after the filing of the divorce petition by the appellant - husband that various proceedings whether by way of registration of FIR or under the Protection of Women from Domestic Violence Act, 2005 were initiated by the respondent -wife. FIR No. 80 under Sections 498A, 406, 506 IPC is dated 28.02.2006. The case under Sections 19, 20, 21, 22 and 23 of Protection of Women from Domestic Violence Act, 2005 was preferred by the respondent in January, 2007. Thus, it has been rightly held by the learned trial Court that taking recourse to law for availing the remedies available to her, the respondent cannot be held

guilty of acts of cruelty, which would entitle the husband to a decree of divorce. Learned counsel for the appellant – husband does not deny that he alongwith other family members have been acquitted being afforded the benefit of doubt. Thus, the acquittal of the appellant and other family members, per se, on account of the allegations not being proved beyond a shadow of doubt does not dilute or falsify the averments made by the respondent – wife. In the present proceedings it is preponderance of probabilities which have to be taken into account. Likewise dismissal of the respondent's petition filed under the Protection of Women from Domestic Violence Act, 2005, after the institution of the petition for divorce by the appellant, does not translate into an act of cruelty which entitles the appellant to a decree of divorce.

The allegation against the respondent – wife of having raised a bogey of illicit relations of the appellant have been specifically denied by her. No such suggestion has even been put to the respondent – wife at the time of cross examination. No reliance can be placed on the compact discs and the conversations recorded by the appellant – husband himself, i.e. Mark P1 and P2 which are not proved as per Indian Evidence Act. Reliance on testimony of Ajay Pannu is a futile exercise as he fails to give any specific date or time when such allegations were raised by the respondent in his presence. Learned counsel for the appellant – husband is unable to point out any ground which may entitle him to decree of divorce.

In the peculiar facts and circumstances of the case, we find no infirmity, perversity or illegality in the finding of the learned

trial Court while dismissing the petition filed by the appellant – husband under Section 13 of the Act seeking a decree of divorce.

However, in view of the discussion above, it is apparent that the learned trial Court has grossly erred in dismissing the petition filed by the wife under Section 9 of the Act on the ground that she has been unable to prove the husband to have withdrawn himself from her society without reasonable excuse. Learned trial Court has erred in observing that the intention of the wife to reside with the husband is suspect especially in view of the allegations of so many bad habits of the husband raised by her. In fact, the evidence on record does not indicate any intention on the part of the respondent – wife to desert her matrimonial home. It is relevant to note at this stage that there is no issue regarding desertion. The argument on behalf of the appellant that as the parties have been residing separately since the year 2005, thus, desertion is apparent, is not acceptable in the facts and circumstances of the case. The appellant – husband is apparently not interested in resuming matrimony with the respondent. The wife is undoubtedly entitled to a decree of restitution of conjugal rights in the peculiar facts and circumstances of this case.

Consequently, FAO No. 7251 of 2011 filed by the appellant – husband is dismissed and FAO No 563 of 2012 filed by the wife is allowed and the impugned judgment and decree dated 23.11.2011 passed by the learned District Judge, Family Court, Faridabad is set aside to the extent the decree of restitution of conjugal rights has been denied. Thus, the petition under Section 9

of the Act filed by Monika i.e. the appellant in FAO No. 563 of 2012 is allowed while holding that she is entitled to a decree of restitution of conjugal rights.

Decree sheet be prepared accordingly.

**RAJIVE BHALLA
JUDGE**

**LISA GILL
JUDGE**

**February 29, 2016
rts**