

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

Sr. No.206

FAO-M-115-2011

Decided on : 15th January, 2016

Sukhcharan Singh

.... Appellant

VERSUS

Ranjit Kaur

..... Respondent

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

**Present: Mr. H.N.S. Gill, Advocate
for the appellant.**

**Mr. Gursharan Singh, Advocate
for the respondent.**

RAJIVE BHALLA, J. (Oral)

The appellant challenges judgment and decree dated 24.12.2010 passed by Additional District Judge, SAS Nagar, Mohali whereby his petition under Section 13 of Hindu Marriage Act, 1955 (hereinafter referred to the Act) for grant of a decree of divorce, has been dismissed.

Counsel for the appellant submits that the respondent was a divorcee with two children. The marriage was solemnised on the specific condition that children would not live with them. After marriage, the respondent began pressurising the appellant to allow the children to live with them and execute a will in favour of the respondent and her children from the first marriage. Counsel for the appellant further submits that the respondent left the matrimonial home in August 2006

and though the appellant went to fetch her, refused to accompany him without the children. The appellant eventually convinced the respondent to accompany him and requested her parents to send the children from the first marriage to their father's home. The respondent again started abusing the appellant, stopped attending to house hold work and even began pressurising the appellant to meet her demand with respect to the children. For a wife to insist that children from her first marriage reside with them as a condition precedent to resuming matrimony raises an inference of cruelty. A child was born to the parties on 30.07.2007, but the respondent's behaviour remained unchanged. Eventually, when the appellant turned down the respondent's request to execute a will in the name of her children from the first marriage, she left the matrimonial home with their minor child, on 1.9.2007, along with valuables and has ever since, been living at her parental home. Counsel for the appellant submits that a perusal of the record particularly depositions by the appellant as PW1 and Devinder Pal Singh as PW2, prove the aforesaid allegations and despite the fact that the respondent was proceeded against ex-parte, the petition has been dismissed by holding that the allegations do not constitute cruelty.

Counsel for the respondent, on the other hand, submits that findings recorded by the Courts below do not suffer from any error of fact or of law. The respondent did not, at any stage, agree to give up her children and never pressurised the appellant to execute a will in her favour in favour of children from her earlier marriage. The appellant has cooked up their story as he does not want to live with the respondent. The appellant, has performed a second marriage and is now living with

another woman.

We have heard counsel for the parties, perused the record that has been produced by counsel for the appellant, considered findings recorded by the Trial Court and find no reason to grant any relief to the appellant, much less to hold that the impugned judgment suffers from any error of fact or of law.

The appellant filed a petition for grant of a decree of divorce by pleadings that though it was agreed between the parties at the time of their marriage that the respondent's children from her first marriage, would not reside with them, the respondent began insisting that the children would reside in the same house and also began pressurizing the appellant to execute a will in their favour. The respondent was proceeded against ex-parte.

The appellant stepped into the witness box as PW1 and repeated his allegations. The other witness PW2 has supported the appellant. The trial Court has after considering the pleadings and the evidence, dismissed the petition.

The question that calls for an answer, is whether the allegation that the respondent insisted that children from her previous marriage should reside with them has been proved if so whether it constitutes cruelty?

The appellant married the respondent, a divorcee with two children. Apart from the appellant's self serving deposition, there is nothing on record to prove that the respondent ever agreed to abandon her children, as a pre condition to the present marriage.

The fact that the respondent lived with the appellant and a

child was born to them is not denied, thereby proving that the allegations are false. The allegations that the respondent brought pressure be bear to execute a will in the name of her children or insisted that her children live with them remains unsubstantiated. A mother cannot be asked to abandon her children and even if such a condition was imposed, though no such condition has been proved, would be cruelty or the part of the appellant-husband. The appellant for some reason was unable to accept the respondent and therefore, used her children from earlier marriage as an excuse to seek a divorce. Counsel for the respondent alleges that the appellant has got remarried and is living with another woman.

Consequently, finding no merit the appeal is dismissed.

(RAJIVE BHALLA)
JUDGE

January 15, 2016
 jyoti III

(LISA GILL)
JUDGE