

IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH

FAO No. M-226 of 2011

Date of Decision: February 18, 2016

Raj Kishore Appellant

Versus

Smt. Manju Respondent

Coram: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Sanjay Vashisth, Advocate
for the appellant.

Mr. P.R.Yadav, Advocate
for the respondent.

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LISA GILL, J.

The appellant-Raj Kishore being aggrieved of the dismissal of his petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') by the learned Additional District Judge, Rewari, vide judgment and decree dated 13.6.2011, has preferred this appeal.

Brief facts as delineated in the petition under Section 13 of the Act are that marriage between the parties was solemnized on 11.5.2006 at village Dhaki Bandra, Tehsil Kishangarh, District Alwar (Rajasthan),

according to Hindu rites and ceremonies. The parties lived at their matrimonial home at village Raipur District Rewari after marriage and were blessed with a daughter on 12.6.2007. It was pleaded that the respondent-wife left the matrimonial home on 3.7.2007 after the birth of their daughter. Despite best efforts on the part of the appellant, the respondent did not return to her matrimonial home. When efforts were being made for reconciliation, the respondent demanded a sum of ₹1 (one) lac along with agricultural land, owned by the appellant's father, to be transferred in her name. The respondent further threatened that in case her demands were not met she would first kill their daughter, then commit suicide and involve the appellant's entire family in criminal proceedings. It was averred that the respondent had deserted the appellant since 3.7.2007. Furthermore, for the period she resided with the appellant, the respondent used to tease the petitioner as well his parents and on one occasion demanded a mangalsutra from the appellant. When he expressed his inability to purchase the same the respondent was infuriated and tried to hang herself from the ceiling fan but was saved on hue and cry

raised by the appellant's mother. The appellant thus prayed for dissolution of marriage on the grounds of cruelty and desertion.

The respondent-wife while admitting the factum of marriage between the parties refuted all the allegations of cruelty and desertion on her part. It was stated that in reality it was the appellant and his family who treated the respondent with cruelty. Continuous demands of dowry were raised and when they were not fulfilled, the respondent was beaten and food was also not provided to her. The respondent was beaten on 10.7.2008 and thrown out of the matrimonial home along with their daughter. A complaint was filed against the appellant in this regard at Police Station Tijara (Rajasthan). Subsequent to this complaint, the petitioner tendered a written apology duly signed by witnesses on 15.7.2008 (Ex. RW1/B). The respondent was brought back to the matrimonial home on the assurance of respectables of the area. During her stay with the appellant, the respondent conceived another child but was compelled to abort the same on being pressurized by the appellant and his family members. The respondent along with their daughter was left at

her parental house on 10.9.2009 by the appellant on the ground that until and unless she brings a motorcycle and ₹50,000/- she would not be permitted to live with him. Thereafter, the respondent being driven to the wall filed a complaint against the appellant under Sections 498-A/ 406/313 IPC. It was thus prayed that the petition under Section 13 of the Act filed by the husband be dismissed. A replication to the written statement was filed by the appellant re-asserting his averments and controverting those of the written statement. The learned trial Court on the basis of the pleadings of the parties framed the following issues:-

1. Whether the petitioner is entitled for a decree of divorce on the grounds of cruelty and desertion as alleged? OPA.
2. Whether this petition is not maintainable in the present form? ORP.
3. Relief.

Evidence was adduced by the parties. The appellant appeared as PW2 and examined his father Chander PW1 and Ramphal, his uncle, as PW3 to prove his case. The respondent-wife appeared as RW1 while

examining RW2 Ami Lal, RW3 Banwari Lal and RW4 Lal Chand who supported her case.

The learned trial Court on consideration of the facts and circumstances of the case as well as the evidence on record dismissed the petition filed by the appellant on the ground that he has failed to prove cruelty and desertion on the part of the respondent-wife.

Learned counsel for the appellant argues that the learned trial Court has grossly erred in denying a decree of divorce to the appellant as there is sufficient and ample evidence on record to prove cruelty and desertion on the part of the respondent. It is submitted that false criminal proceedings in the shape of FIR No. 427 dated 15.10.2009 under Sections 498-A/406/313 IPC have been initiated against the appellant at Police Station Tijara District Alwar, which in itself is an act of cruelty on the part of the respondent, who does not actually wish to live with the appellant. Undue importance has been conferred upon the apology tendered by the appellant as reflected in Ex.RW1/B. The appellant's endeavour to bring peace and harmony had resulted in this apology and not any

actual fault on his part, therefore an adverse inference should not be drawn against the appellant on this account. Cruelty on the part of the respondent is apparent on record. The respondent used to make unjustified demands and threatened the appellant and his family to commit suicide and she was responsible for the death of their daughter as well. Furthermore, she did not join the matrimonial home after deserting the appellant on 3.7.2007. Therefore the appellant is entitled to a decree of divorce and the impugned judgment and decree should be set aside.

Per contra learned counsel for the respondent submits that it is the appellant who is guilty of treating the respondent with cruelty. Desertion on the part of the respondent is not proved on record. In fact, the respondent lived in her matrimonial home pursuant to the settlement/compromise between the parties on 8.7.2008. The divorce petition was instituted on 27.7.2009. Subsequent registration of FIR No. 427 on 15.10.2009 does not dilute the averments made by the respondent in any manner. Availing of a legal remedy available to her cannot be termed as an act of cruelty. Thus, it is prayed that this appeal be dismissed.

We have heard learned counsel for the parties and have gone through the pleadings and evidence on record.

Marriage between the parties was solemnized on 11.5.2006 and the parties were blessed with a daughter on 12.6.2007. The pleading and argument on the part of the appellant-husband that the respondent left the matrimonial home on 3.7.2007 and despite best efforts did not return as well as allegations of cruelty on her part are falsified by the evidence on record. A perusal of Ex.RW1/B i.e. the compromise between the parties reveals that the appellant tendered a written apology to the respondent for having raised a demand of dowry along with his family members. He has admitted that he along with his family members caused harassment and cruelty to the respondent on this account. However, on the intervention of the respectables of the village he admitted his mistake and apologized for the same and further undertook that he, as well as his family members would not trouble the respondent in future and would treat her in a proper manner, failing which the respondent would be at liberty to take action against them. Execution of this

document has been specifically admitted by the appellant-Raj Kishore PW2. PW3 Ram Phal, has also admitted the execution of the compromise dated 8.7.2008, which bears his signatures as a witness. The apology as well as assurance tendered by the appellant at that time is ratified by PW3 Ram Phal. Similarly, averment of demand of ₹1 (one) lac by the appellant and transfer of land in her name remain unsubstantiated. The attempt to commit suicide by the respondent on expression of inability to purchase a mangalsutra by the appellant has also not been proved on record. There are no pleadings in respect to murder of the daughter of the parties in the petition under Section 13 of the Act and neither is there any evidence to that effect. The date of death of their daughter is also not on the record. The learned trial Court has, thus, returned a correct finding that the appellant has miserably failed to prove any act of cruelty on the part of the respondent.

Similarly the appellant has failed to prove desertion by the respondent. The averment that the respondent had deserted her matrimonial home and had been living separately since 3.7.2007 is palpably

false in view of the deposition of the appellant himself wherein he has admitted that the respondent resided with him after the settlement dated 8.7.2008 till 10.9.2009. The petition under Section 13 of the Act filed by the appellant on 25.7.2009 clearly reflects the intention of the appellant. The appellant has miserably failed to prove that the respondent withdrew from the appellant's company without any reasonable or sufficient cause, therefore, desertion on the part of the respondent is not proved.

Learned counsel for the appellant is unable to point out any illegality, infirmity or perversity in the impugned judgment and decree dated 13.6.2011 passed by the learned Additional District Judge, Rewari, which requires interference by this Court. Consequently, the impugned judgment and decree dated 13.6.2011 is affirmed and this appeal is dismissed.

(RAJIVE BHALLA)
JUDGE

(LISA GILL)
JUDGE

18.2.2016
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