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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M No.286 of 2012 (O&M)

Date of Decision: 17.05.2016

Rimpi

.....Appellant

Vs

Yogender

.....Respondent

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Balraj Singh Dhull, Advocate
for the appellant.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Appellant-Rimpi remained unsuccessful before the trial Court in her endeavour to seek divorce under Section 13 of the Hindu Marriage Act, 1955 (hereinafter to be referred as 'the Act') against the husband-respondent.

[2]. Appellant filed petition under Section 13 of the Act for dissolution of marriage by decree of divorce on the averment that marriage of the appellant was solemnized with the respondent on 25.09.2006 according to Hindu rites and ceremonies. The marriage was consummated and a son was

born out of their wedlock, who is living with the appellant-wife. The cousin of the appellant namely Meena Devi was also married to elder brother of the respondent-husband. Appellant alleged that Meena Devi had differences with her husband i.e. elder brother of the respondent. The strained relationship between Meena Devi and her husband also soared their relationship between the appellant and her husband. Respondent-husband started levelling immoral allegations.

[3]. For the purposes of deciding the present appeal, it will not be necessary to trace out the necessary details of pleadings and evidence adduced on record because the present appeal can be summed upon on the basis of proceedings undertaken before this Court itself. As a matter of fact, this Court passed an order dated 20.01.2015 fixing an amount of Rs.2,000/- per month as maintenance *pendente lite* to the appellant-wife and her minor son under Sections 24 and 26 of the Act. The said amount was ordered to be paid from the date of application during pendency of the appeal in this Court. Besides maintenance, an amount of Rs.11,000/- was ordered to be paid towards litigation expenses. The application CMM No.154 of 2013 was accordingly disposed of in the above said terms.

[4]. Thereafter the aforesaid order dated 20.01.2015 was not complied with. As a result of that another CM No.5926-CII of

2016 was moved by the appellant for complying with the order dated 20.01.2015 passed by the Co-ordinate Bench of this Court. It was averred by the applicant-appellant that the respondent-husband has not paid even a single penny to her till date and has not complied with the order passed by this Court. Appellant showed her inability to maintain herself as well as her minor child towards day-to-day expenses and court proceedings. It was asserted that respondent was enjoying a good financial position.

[5]. Notice of the aforesaid application was given to the non-applicant/respondent through his counsel on 21.03.2016 and the case was fixed for 12.04.2016. On 12.04.2016, learned counsel for the respondent appeared in the case and submitted that husband is not in a position to pay maintenance *pendente lite* as ordered by this Court. The order granting maintenance was never assailed by the respondent-husband in any proceedings. That fact was noticed by this Court in order dated 12.04.2016 and as a result of that defence of the respondent-husband was struck off. The case was adjourned for argument for today.

[6]. We have heard learned counsel for the appellant.

[7]. Appellant-wife sought divorce on the ground of cruelty. She remained unsuccessful on the grounds of cruelty as

pleaded by her in the petition. The question arises before this Court as to whether non-payment of amount of maintenance to the wife during pendency of appeal or during pendency of divorce petition amounts to cruelty or not?

This Court in **Rashwinder Kaur vs. Ravinder Pal Singh, 2013(1) HLR 483** and **Davinder Singh vs. Kulwinder Kaur, 2014(1) PLR 503** held that non-payment of maintenance amount during pendency of proceedings by the husband amounts to cruelty. When the helpless lady was having no means of subsistence and has the liability to bring up the minor issue also, the non-payment of maintenance *pendente lite* was construed to be an instance of cruelty.

[8]. The Court can always take into consideration the subsequent acts of the parties for just decision of the case. The husband in his categorical stand submitted that he is not in a position to pay any maintenance *pendente lite* to the appellant-wife. Faced with that situation, this Court had no option, but to strike off the defence of the respondent. In **Beant Kaur vs. Gurwinder Singh, (FAO-M No.311 of 2013)** decided on 27.04.2016, this Court has taken a similar view in the circumstances, where despite several opportunities, the husband did not make the payment of maintenance *pendente lite* as ordered by the Court under Section 24 of the Act. The defence

set up by the husband-appellant in the appeal was struck off and consequently the appeal was allowed as the act of respondent-husband was treated to be a cruelty for not making good the payment towards maintenance *pendente lite*. It was held that leaving the wife in penury by the husband without offering anything to sustain her life, despite the order of the Court amounts to cruelty.

[9]. The present case is not an exception to the observation made by this Court in the aforesaid cases. Similar view was also taken up by the Co-ordinate Bench of this Court in **Raj Rani @ Rani Devi vs. Karam Singh, 2015(1) HLR 195** wherein non-payment of maintenance granted under Section 24 of the Act was construed to be an act of cruelty to the wife.

[10]. In view of aforesaid, we are constrained to accept this appeal without going into further details and other merits or demerits of the case pleaded before the trial Court. Accordingly, the impugned judgment and decree dated 08.09.2012 passed by the Additional District Judge, Kurukshetra is hereby set aside. Appeal is allowed, dissolving the marriage by decree of divorce. Decree sheet be prepared.

(RAJ MOHAN SINGH)
JUDGE

May 17, 2016
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(M. JEYAPPAUL)
JUDGE