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

**FAO-M-311 of 2013 (O&M)
Date of Decision: 27.04.2016**

Beant Kaur

.....Appellant

Vs

Gurwinder Singh

.....Respondent

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

Present: Mr. H.P.S. Ishwar, Advocate
for the appellant.

None for the respondent.

M. JEYAPPAUL, J.(Oral)

CM No.17946-CI of 2015

This is an application filed by the appellant praying permission to lead additional evidence.

We went through Annexures P-1 and P-2, which are nothing but the order passed by the competent Criminal Court under Section 125 Cr.P.C and the order passed by the Executing Court.

As the defence of the respondent has already been struck off and there is also no appearance on his behalf, the question of issuing notice to him does not arise.

As these documents Annexure P-1 (Ex.P-7) and Annexure

P-2 (Ex.P-8) relate to the orders passed by the competent Courts in the Court proceedings *inter se* between the parties, the application is allowed accordingly.

FAO-M-311 of 2013

Appellant-Beant Kaur filed a petition under Section 13 of the Hindu Marriage Act praying for a decree of divorce on the ground of cruelty and desertion. The trial Court having embarked upon the entire evidence adduced by the respective parties, concluded that the appellant-Beant Kaur failed to establish the allegations of cruelty and desertion attributed to respondent-Gurwinder Singh. Resultantly, the petition filed by the appellant under Section 13 of the Hindu Marriage Act was dismissed.

Appellant-Beant Kaur has challenged by way of present appeal the dismissal of the petition filed by her for divorce. During the pendency of this appeal, appellant filed an application i.e. CMM No.117 of 2014 praying for grant of maintenance *pendente lite*. This Court vide its order dated 16.12.2014, directed the respondent-husband to pay maintenance *pendente lite* @ 2500/- per month, not only to the appellant but also to her minor daughter.

We gave several opportunities to the respondent-husband to make payment of the maintenance *pendente lite* decided by us under Section 24 of the Hindu Marriage Act. The defence set up by the respondent in this appeal was, in fact, struck off, as he has chosen not to pay the maintenance as ordered by this Court.

We went through the judgment passed by the trial Court in the light of the evidence adduced by the respective parties. As rightly pointed out by the learned trial Court, the appellant has in fact failed to establish cruelty with the evidence adduced by her. The question that survives for consideration now in this appeal is whether the subsequent conduct of the respondent can be taken as a ground for granting relief sought for by the appellant.

It is now a settled position of law that if the husband refuses to pay the maintenance *pendente lite* ordered by the Appellate Court, such conduct of the husband can be construed as cruelty perpetrated against the wife, inasmuch as the husband is not supposed to leave the wife in the lurch without any means to carry on her life. In our considered view, where a wife has been left without any resources to maintain herself, it amounts to cruelty.

Reverting to the facts and circumstances of this case, we find that the respondent-husband was adamant enough in not paying the maintenance *pendete lite* in spite of several opportunities afforded to him. Ultimately, his defence in the appeal has been struck off.

Learned counsel for the appellant referred to Ex.P-7 and Ex.P-8 and submitted that the respondent has in fact suffered a statement before the Executing Court, which took up the Execution of the order passed by the Criminal Court under Section 125 Cr.P.C that the respondent did not want to pay the maintenance awarded

under Section 125 Cr.P.C. It is not a question of financial constraint, which forced the respondent not to pay maintenance to the appellant-wife, rather he did not want to part with any amount towards maintenance as ordered by the Court. The respondent who has married the appellant is bound to maintain her. Leaving the wife in penury by the husband without offering anything to sustain her life despite the orders passed by the competent Court directing him to make payment of maintenance, certainly amounts to cruelty.

Considering the above subsequent development in this case, we are of the considered view that the respondent-husband has committed cruelty and as a result of which the appellant is entitled to a decree of divorce.

In view thereof, the impugned order passed by the trial Court stands set aside and the appeal is allowed granting a decree of divorce under Section 13 of the Hindu Marriage Act dissolving the marriage between the parties. Decree-sheet be prepared.

(M. JEYAPPAUL)
JUDGE

April 27, 2016
Prince

(RAJ MOHAN SINGH)
JUDGE