

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M No.331 of 2013

Date of Decision: 20.05.2016

Geeta

.....Appellant

Vs

Vijay Sharma

.....Respondent

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

Present: Mr. Sharad Aggarwal, 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-Geeta remained unsuccessful in her petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') seeking dissolution of her marriage with the respondent by decree of divorce. Hence the present appeal.

[2]. In the petition filed by the appellant, it was alleged that her marriage was solemnized with the respondent on 10.12.1986 according to Hindu rites and ceremonies. The marriage was consummated and four children took birth from this wedlock. At the time of filing of the petition Arun (son) was aged 19 years, Sonia (daughter) was aged 17 years, Varun (son) was aged 15 years and Prince (son) was aged 13 years.

Daughter Sonia was residing with the appellant whereas all the

three sons were residing with the respondent.

[3]. Appellant alleged that behaviour of the respondent was cruel towards her from the very beginning. Respondent used to come in the late hours in the night under the influence of liquor and used to give beatings to the appellant without any fault of her. Appellant always treated him as her husband with the hope that better sense may prevail upon him one day, but all in vain. Respondent used to quarrel with the appellant on false premise and was in the habit of leaving the company of appellant without any rhyme or reason. Many Panchayats were convened, but respondent always kept on giving false assurance to the Panchayat people. Even after birth of the children there was no change in the behaviour of the respondent. The environment of the house had tallying effect upon the children. Respondent used to maltreat the entire family and had no love and affection towards the children as well.

[4]. It was further alleged that appellant faced mental agony continuously, but still she managed to cope with the situation. On 24.12.2010, appellant was shunted out from the matrimonial house without any sufficient reasons after giving beatings. Since then, she was living with her widowed mother at Karnal along with her daughter Sonia. Thereafter a Panchayat was convened on 13.01.2011 in which Sher Singh, resident of Karnal, Umesh

(brother), Smt. Pawan Rani (mother), Smt. Meena Sharma (Bua) of the appellant participated, but the respondent flatly refused to accommodate the appellant in the matrimonial house. Having failed in the reconciliatory process, the appellant had no option, but to file the divorce petition because she did not condone the act and conduct of the respondent. Appellant was treated with cruelty by the respondent. With this background divorce petition came to be filed at the instance of the appellant-wife.

[5]. Respondent despite notice did not appear before the trial Court and he was accordingly proceeded against *ex parte*. Thereafter appellant led *ex parte* evidence by getting herself examined as PW-1. She narrated the facts by way of affidavit (Ex.PW-1/A) before the trial Court. She stated before the trial Court that the contents of her affidavit be read as part and parcel of her statement.

[6]. After appraisal of evidence, the trial Court held that statement of the appellant was not sufficient for granting divorce as appellant did not examine the persons who attended the Panchayat on 13.01.2011. Trial court drew adverse inference against the appellant for want of plausible explanation for not examining other witnesses to corroborate her testimony as PW-1 and dismissed the petition vide the impugned judgment

and decree dated 06.08.2013.

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

[8]. Before this Court the respondent was served with notice through his son, however he did not prefer to appear on 25.03.2014 and the case was adjourned for arguments.

[9]. In the examination-in-chief, appellant sworn to an affidavit and stated about the incidents. The contents of the affidavit were treated to be the examination-in-chief of the appellant as PW-1. There was no denial or cross-examination of the appellant i.e. PW-1 by the respondent. In a way, the statement of the appellant went unrebutted. In her statement by way of affidavit, appellant has specifically stated about the relevant facts including convening of Panchayat on 13.01.2011 which was attended by Sher Singh, resident of Karnal, Umesh (brother), Smt. Pawan Rani (mother), Smt. Meena Sharma (Bua) of the appellant in which respondent flatly refused to keep the appellant in his company. Since, there is no cross-examination on the part of the respondent, therefore, this fact has to be treated to be proved.

[10]. The evidence of the appellant as PW-1 was never questioned by the respondent and it remained unrebutted on record. The unrebutted testimony of the appellant cannot be hit by any adverse inference in the event of non-examination of the

participants of the meeting of Panchayat dated 13.01.2011. Since this fact has not been rebutted by the respondent, therefore, non-examination of these participating members of the Panchayat would be of no consequence as the testimony of the appellant i.e. PW-1 was never rebutted by the respondent in any manner.

[11]. The question of drawing adverse inference could have been appreciated by the Court, if the respondent had appeared in the case and took such an objection in the context of non-examination of Panchayat-members. Since there was no denial to the aforesaid fact in any manner, therefore, the testimony of the appellant has to be treated as complete and unrebutted. Respondent was *ex parte* before the trial Court and he remained *ex parte* before this Court as well.

[12]. Having considered the submissions with reference to the record, we are of the considered view that the appeal needs to be accepted. Resultantly, impugned judgment and decree dated 06.08.2013 passed by the Additional District Judge, Karnal is hereby set aside. Appeal is allowed, accepting the petition under Section 13 of the Act and the marriage between the parties stands dissolved. Decree sheet be prepared.

(RAJ MOHAN SINGH)
JUDGE

May 20, 2016

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(M. JEYAPPAUL)
JUDGE