

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

**FAO-M No.91 of 2016
Date of Decision-15.03.2016**

Prem Chand ... Appellant

Versus

Sonia Rani ... Respondent

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. S.K. Aneja, Advocate
for the appellant.

RAJ MOHAN SINGH, J.

[1]. Appellant has assailed judgment and decree dated 17.11.2015 vide which petition under Section 9 of Hindu Marriage Act 1955 for restitution of conjugal rights was dismissed with costs.

[2]. Appellant sought restitution of conjugal rights against the respondent on the ground that his marriage was solemnized with the respondent on 02.02.2008 according to Hindu rites and ceremonies. Marriage was simple and dowry less. Party started living and cohabitated as husband and wife. The composition of the family of the respondent was such that the respondent started paying attention to them as there was no female member to do the domestic work. Mother was a diabetic patient and was unable to move around easily. The younger sister of the respondent was a student and she had to go to the nearest city frequently and even had to stay over

there for some days. Similar position existed in the house of the appellant as well and that was the reason for the marriage with the respondent as the appellant was reasonably hopeful that the respondent would pay proper attention to his family members.

[3]. Appellant alleged that the respondent was in the habit of not returning back from the parental house even after 10-15 days. That was the reason why the appellant stopped her sending to her parental house and dispute ultimately erupted.

[4]. Appellant alleged that the respondent started maltreating him as well as his family members. She started making frequent visit to her parental house without any consent of the appellant. Her younger brother met with an accident on 22.01.2011. On receiving message, appellant and the respondent went to village Mannewala to see him. The respondent was pregnant at that time. On request of the family members of the respondent, the appellant left the respondent with them for some days due to accident of his brother-in-law. The respondent did not turn up to get herself examined for the conduct of ultrasound on 28.01.2011.

[5]. Appellant further alleged that on 18.02.2011, there was marriage of cousin sister of the respondent and she had to attend that marriage. On 04.02.2011, respondent along with his brother and three unknown persons visited the matrimonial

house and by forcibly entering the house took away the gold ornaments weighing 13 tolas and cash worth Rs.2,00,000/- with them, which was lying in the Almirah in the store. The said amount was kept by the father of the appellant for execution of sale deed and tube-well boring. Some complaint was also given to the police, but no action was taken.

[6]. Appellant further asserted that the respondent was living away from conjugal society of the appellant without any reasonable cause and had willfully neglected the appellant, despite his repeated efforts to bring her to join conjugal relationship. The appellant also asserted that on 18.04.2011, he along with Panchayat members went to the house of the respondent for bringing her back to the matrimonial house and to resume conjugal life, but the effort went in vain.

[7]. Respondent contested the petition on all counts. Respondent pleaded that she was thrown out of the matrimonial house without any rhyme and reason. Marriage was solemnized with all pomp and show and her parents had spent about Rs.6,00,000/- at the time of the marriage. On the demand of the husband and his family members, dowry articles were given in the form of gold and silver ornaments and other valuable articles. Filing of the petition under Section 9 of Hindu Marriage Act was claimed to be a counter-blast of the

application filed by the respondent for maintenance under Section 125 Cr.P.C.

[8]. Respondent claimed that the husband has filed the petition for restitution of conjugal rights only to save himself from payment under Section 125 Cr.P.C. The respondent was thrown out of the matrimonial house due to inability of her parents to give car in the marriage. Respondent also claimed that despite convening Panchayat, no fruitful result could come out. On merits, petition was claimed to be not maintainable.

[9]. Both the parties went to trial on the following issues:-

“1. Whether the respondent has willfully drawn from the society of applicant? OPP

2. Relief.”

[10]. Parties led their evidence to prove their respective case. Trial Court on the basis of material on record, decided issue No.1 against the appellant and resultantly petition was dismissed with costs.

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

[12]. During the course of arguments, learned counsel for the appellant tried to impress upon the Court that appellant wants to settle with the respondent and for that she should be summoned before this Court. On deeper consideration, we found that for ultimate settlement with the respondent, the

appellant can resort to petition under Section 13-B of Hindu Marriage Act for seeking settlement on either side.

[13]. In the present case, restitution of conjugal rights is being sought in view of the circumstances projected by the appellant. The respondent has contested the claim of the appellant by asserting that the petition came to be filed as a counter-blast only after filing of application under Section 125 Cr.P.C by the wife. Secondly, an FIR under Section 406/498-A IPC was registered against the appellant and his family members, in which they remained in judicial lock up. Respondent contended before the trial Court that in view of these glaring instances, there was no possibility of any reconciliation and the petition was directed to harass and humiliate the respondent.

[14]. We also found from the record that respondent while appearing as RW-I did not deny her marriage with the appellant and birth of a female child, but she had asserted that she was thrown out from the matrimonial house without any rhyme and reason. The husband and his family members demanded car from her family members, but on account of their inability to fulfill the demand, she was thrown out from the matrimonial house. She had already filed a petition under Section 125 Cr.P.C. The husband while appearing in the Court had admitted that he does not know when he was blessed with female child.

This fact was sufficient to show the mind-set of the husband as regards his belongingness to the affairs of the matrimonial family. The appellant as well as his witnesses also admitted in their cross-examination that FIR was registered against the appellant as well as his family members and they remained in judicial lock up.

[15]. In the light of aforesaid position, more particularly in view of interim maintenance granted to the respondent-wife during pendency of the petition under Section 125 Cr.P.C and at one point of time the husband could not produce any document to show that he had paid any maintenance to the respondent-wife, the conditional warrant of arrest was issued against the appellant for non-payment of maintenance. Filing of the petition under Section 9 of Hindu Marriage Act is apparently found to be a counter-blast to avoid his liability to pay maintenance. The appellant-husband could not demonstrate with reference to any incriminating material as to how respondent-wife left the matrimonial house without any reasonable cause.

[16]. In view of material on record, this Court does not find it to be a case of interference. Section 9 of Hindu Marriage act appears to have been resorted to by the appellant just to avoid his liability to pay maintenance and also to harass and humiliate the respondent-wife for her lodging FIR against the

appellant and his family members. It is a subjective issue whether wife would go back to matrimonial house after having suffered humiliation of such degree. The stand of the respondent is to see the husband and his family members to be prosecuted. Bona fide of the husband cannot be inferred, at this stage. If appellant-husband is sincere enough and is desperate to habitate the respondent-wife in the matrimonial house, it would still be open to him to take appropriate steps and to devise lawful criteria for such a relief. In any case, petition under Section 9 of Hindu Marriage act would not be an impediment in such a course. In any case, Section 9 of Hindu Marriage Act cannot be resorted to for solving personal vendetta of the appellant and to allow the respondent-wife to face further vagaries of matrimonial life, which she has successfully avoided to face at this juncture.

[17]. Totality of facts and circumstances of the case does not impress us to interfere in this appeal. Therefore, the appeal is found to be totally bereft of merit and is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

15.03.2016

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