

CR No. 172 of 2017
DECIDED ON: JANUARY 13, 2017

.....PETITIONER

.....RESPONDENT

Present: Mr. Rakesh Bakshi, Advocate
for the petitioner.

By virtue of instant revision petition preferred under Article 227 of the Constitution of India, petitioner has sought the setting aside of impugned order dated November 01, 2016 (Annexure P-1) passed by learned Civil Judge Senior Division, Yamuna Nagar at Jagadhari, whereby, an application under Section 9 of the Hindu Marriage Act for restitution of Conjugal Rights (for short 'Act'), moved by the respondent-Aman Singla, has been allowed.

Learned counsel for the petitioner has contended that learned trial Court has wrongly placed reliance upon the judgment of this Court rendered in the case of ***Usha Rani Sharma v. Amar Nath Sharma; 1993 (2) HLR 591***, and has wrongly placed the onus to prove, as to whether the respondent had a reasonable cause to withdraw from the society of the petitioner. In fact, the said judgment is not applicable to the case in hand, as the facts of the present case

are not squarely covered by it. Facts of the case cited are also entirely different from the facts of the present case and an application moved by respondent has been illegally, arbitrarily allowed vide impugned order November 01, 2016 (Annexure P-1), which is otherwise not sustainable in the eyes of law. Otherwise also onus to prove issue No.1 should have been on the respondent, because petition under Section 9 of the Act claiming relief of restitution of Conjugal Rights was filed by him alleging that his wife has withdrawn his company without any sufficient cause and excuse, in view of the denial thereof, in her reply. Even, as per Section 101 of the Indian Evidence Act, 1872, burden of proof lies on the one who desires any Court to give judgment as to any legal right or liability dependent on the existence of facts, which he asserts.

This Court has given an anxious thought to the submissions made by learned counsel for the petitioner but does not find any legal or factual substance.

It is pretty settled by now that burden to prove the fact(s) that there are reasonable cause for withdrawal from the society of the petitioner, is upon the respondent. Such an observation was made in *Usha Rani's case (supra)* . During the course of argument, learned counsel for the petitioner could not cite any other judgment contrary to the judgment relied upon by lower Court.

Thus, this Court does not find any merit in the instant revision petition. As such, it stands dismissed.

JANUARY 13, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No