

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

225

FAO No.M-133 of 2013

Date of Decision: October 24th, 2017

Rajwinder Kaur

...Appellant

Versus

Ram Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**

Present: Mr. Jagraj Singh Khiva, Advocate
for the appellant.

None for the respondent.

AUGUSTINE GEORGE MASIH, J.

The petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'H.M. Act'), for dissolution of marriage of the parties by passing a decree of divorce on the ground of cruelty, was preferred by respondent-husband Ram Singh alleging therein that the appellant-wife Rajwinder Kaur was strong headed lady who misbehaved with the appellant and the family members and was of adamant behaviour. She, on provocation of her parents and especially uncle Sukhdev Singh Khera who had been interfering in the family of hers, had been using abusive language and threatening them in involvement of false cases. Efforts were also being made to force the parents of the respondent-husband to transfer the share of the land in the name of the respondent and to separate him from his family. This unreasonable demand of the appellant-wife was not accepted, which resulted in lodging of a false complaint against the whole family with an allegation that they had tried to kill the appellant-wife by administering some poisonous substance in her mouth. FIR No.59 dated 02.06.2008 under Sections 498-A, 406, 307

read with Section 34 of the Indian Penal Code was registered against the

appellant and his family members, who after trial, were acquitted and thereafter the appeal preferred by the appellant-wife has also been dismissed, thus, causing mental as well as physical cruelty to the respondent. All these allegations were denied by the appellant-wife and rather she asserted that she has been tortured physically and mentally harassed and that her future is dark due to the aggressive and non-cooperative approach on the part of the respondent. FIR was rightly registered and the acquittal of the respondent-husband and the other family members is because of technical grounds.

2. The trial Court proceeded to accept the petition filed by the respondent-husband and passed a decree of divorce dated 27.02.2013 on the ground of cruelty which is under challenge in the present appeal by the appellant-wife.

3. Upon notice having been issued, respondent had put in appearance through counsel. An application under Section 24 of the H.M. Act was filed by the appellant which was decided by this Court vide order dated 10.02.2015 awarding ₹3,500/- per month to the appellant-wife as maintenance *pendente lite*. The case came up for hearing on 27.05.2015, when the counsel for the appellant informed the Court that the respondent has not paid maintenance since 11.02.2014. On 14.07.2015, a sum of ₹8,000/- in cash was paid by the respondent to the appellant towards arrears of maintenance of ₹59,500/-. Counsel for the respondent had sought two weeks' time to pay the remaining amount of arrears of maintenance. On 26.08.2015, when the case came up for hearing, counsel for the respondent made a statement that despite his best efforts,

respondent-husband has not come forward for making the payment good of arrears of maintenance. The Court being satisfied that the respondent was intentionally not paying arrears of maintenance, struck off his defence. The case was thereafter taken up for consideration on 18.08.2017, when the following order was passed:-

“This appeal was taken up on 26.08.2015 when the respondent had sought two weeks' time to pay the arrears of maintenance. Declining his request, the defence of the respondent-husband was struck off. Thereafter, the appeal was taken up for hearing on 22.09.2015 but it was adjourned to 29.10.2015.

Counsel for the respondent, in view of the said circumstances, can participate in the proceedings but respondent's defence will remain struck off as per the order dated 26.08.2015.

Listed for final hearing on 24.10.2017”.

4. On 24.10.2017, none had put in appearance on behalf of the respondent and keeping in view the fact that the defence of the respondent had already been struck off but liberty was granted to the counsel for the respondent to participate in the proceedings who also failed to appear before the Court, this Court has further proceeded in the matter.

5. In a similar case where despite opportunity having been given to the respondent-husband to pay the maintenance amount as fixed by this Court, this Court in *FAO-M-371-2014* titled as *Nirmal Kaur Versus Kirpal Singh*, decided on 02.12.2017, has held that where the defaulter wilfully neglects and/or refuses to comply with the order, he should face the consequences. The very purpose and intent of Section 24 of H.M. Act. and the mandate of the Section stand negated and frustrated in case the needy, destitute and financially weak spouse is left at the mercy of the said spouse

resulting in denial of justice to a person who is entitled to reap the fruits of the order passed by the Court. Although there is no specific provision and the mandate under the H.M. Act indicating the effect of non-compliance of an order passed under Section 24 of the H.M. Act, however, Section 21 of the H.M. Act makes Civil Procedure Code, 1908, applicable to all proceedings, as far as may be subject to the provisions of the H.M. Act and the rules as the High Court may make in this behalf. Section 151 CPC is, therefore, available which empowers the Court by conferring inherent powers which enables the Court to make such orders as may be necessary for the ends of justice to prevent the abuse of process of Court. This Court further proceeded to hold that striking down of the defence or the pleading of the parties can be resorted to. Further dealing with Section 23(1)(a) of the H.M. Act, the Court held in para 20 as follows:-

“20. Reading of Sub-Section (1) (a) of Section 23 of the H.M. Act leads us to a conclusion that a petition must be dismissed in case the Court is satisfied, although the petitioner may have been able to establish the ground for granting the relief, but is taking advantage, in any way, of his or her own wrong or disability for the purpose of relief as envisaged therein. Thus, the conduct of the parties has to be monitored as also the disability and if that does not fall within the parameters of this provision, the decree can be denied. Therefore, it has to be the satisfaction of the Court that no advantage has been taken by the petitioner of his wrong or disability despite the ground having been established for grant of relief under the Act. The rule is based on the principle of justice that the wrong doer should not be permitted to take advantage of his or her own wrong or disability while seeking relief at the hands of the Court in any matrimonial proceedings. The word 'wrong' should be an act or misconduct by a party, which is serious enough so as to

deny relief and, therefore, it cannot be given a liberal application. The term 'wrong' should and must mean an act or omission, which causes an injury to the other side, which would be of such a nature as would fall within the ambit of Section 23 (1) (a) of the H.M. Act. Therefore, whether an act or omission would be termed as wrong under Section 23 (1) (a) of the H.M. Act would be dependent upon the facts and circumstances of each case”.

and thereafter, in para 21, observed as follows:-

“21. This leads us to a question where a spouse, despite having been given opportunities to discharge the liability of payment of the arrears as per the assessed maintenance pendente-lite and/or litigation expenses by a Court under Section 24 of the H.M. Act, has chosen not to pay and/or has refused to do so. Will this act and conduct of such a spouse amount to committing a wrong within the meaning of Section 23 of H.M. Act and taking advantage thereof for the purpose of the grant of relief?”

6. The Court relying upon the judgment of the Supreme Court in *Hirachand Srinivas Managaonkar Versus Sunanda, 2001 (4) SCC 125* and the judgments of this Court in *Subhash Versus Sheela Devi, 2007 (1) RCR (Civil) 165* and *Jai Bhagwan Versus Kamlesh, 2005 (3) RCR (Civil) 224* has held that where the husband fails to pay maintenance *pendente lite* and litigation expenses as assessed by the competent Court under Section 24 of the H.M. Act, despite having been given opportunities to do so, it would amount to committing wrong under Section 23 of the H.M. Act disentitling him to relief claimed by him under the H.M. Act.

7. In view of the above, this Court has no option but to hold that the respondent-husband having not paid the maintenance *pendente lite* and litigation expenses as well as the arrears, has committed a wrong and is taking advantage of his own wrong for the purpose of claiming relief of

divorce as per the provisions of Section 23(1)(a) of the H.M. Act disentitling him to such a decree.

8. The effect of the above is that the defence of the respondent having been struck off, he is not entitled to press his pleas and the pleadings in the petition under Section 13 of the H.M. Act which he had preferred before the trial Court as after the defence having been struck off, there are no pleadings in existence in the eyes of law and, therefore, the same cannot be taken note of. The result is that there being no petition in the eyes of law on the record, the judgment and decree dated 27.02.2013 passed by the District Judge, Mansa, as a consequence of the filing of the petition under Section 13 of the H.M. Act, cannot sustain and deserves to be set aside.

9. In view of the above, the present appeal is allowed.

10. Impugned judgment and decree dated 27.02.2013 passed by the District Judge, Mansa, is hereby set aside.

11. Petition under Section 13 of the H.M. Act preferred by respondent-Ram Singh is dismissed.

12. Let a decree sheet be prepared accordingly.

(M.M.S. BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

October 24th, 2017

Puneet

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No