

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

**FAO No.5209 of 2015
Date of decision: 09.01.2017**

KuldeepAppellant(s)
Versus
Vidya Devi ...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE M.JEYAPPAUL
HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr.M.S.Kathuria, Advocate, for the appellant.
Mr.N.K.Malhotra, Advocate, for the respondent.

M.JEYAPPAUL, J. (Oral)

Appellant-husband has preferred the present appeal, aggrieved by the dismissal of his petition filed under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights.

Counsel for the appellant-husband has contended that the appellant performed marriage with the respondent in the presence of relatives, in the month of October, 2004, after his brother-Jagbir Singh, who was the first husband of the respondent, died on 22.02.2004. Respondent was blessed with two children through her first marriage with Jagbir Singh. The marriage with the appellant also was consummated and as a result of which, the appellant and the respondent were blessed with a child on 30.05.2008. It is contended that the respondent, who is now earning a handsome money as a Junior Basic Teacher, has deserted him and therefore, he sought for restitution of conjugal rights.

Counsel for the respondent-wife has contended that the appellant treated her cruelly. He was slave of bad vices and used to spoil his earnings in gambling etc.

The Trial Court, having adverted to the evidence on record, made an observation based on the testimony of PW-1, Ram Kumar, that the appellant used to take liquor. There is a finding by the Trial Court that the appellant is a man of bad vices. The Trial Court also referred to the

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development after the petition under Section 9 of the Hindu Marriage Act, 1955 was filed by the appellant that the respondent filed a criminal complaint against the appellant as he had picked-up a quarrel with the respondent, during the pendency of the petition under Section 9 of the HMA. The Trial Court also made a specific reference to the audacity of the appellant in moving a petition under Section 125 Cr.P.C., seeking maintenance from the respondent-wife, in spite of the fact that the respondent, who is, in fact, serving as a Junior Basic Teacher, is bound to maintain, not only the two children, born out of the erstwhile wedlock but also the child born out of the marriage with the appellant.

Having heard the submissions made by counsel appearing for the appellant, at the time of admission on 12.08.2015, in the background of the decision arrived at by the Trial Court, this Court passed an order on 12.08.2015 that there was no error in the order passed by the Ld. District Judge, Family Court, Rohtak. Only a limited scope for conciliation of the matrimonial dispute between the parties was provided to the appellant.

Now, the fact remains that the mediation process twice embarked upon at the instance of this Court, did not fructify. Therefore, we find that there is no merit in the present appeal and therefore the same stands dismissed.

**(M. JEYAPPAUL)
JUDGE**

January 09th, 2017
Sailesh

**(G.S. SANDHAWALIA)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No