

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-6841-2016

Date of Decision: 22.5.2017

Som Raj

....Appellant.

Versus

Kiran Bala

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

PRESENT: Mr. Arun Kumar Bakshi, Advocate for the appellant.

None for the respondent despite service.

AJAY KUMAR MITTAL, J.

1. Feeling aggrieved by the judgment and decree dated 19.8.2016 passed by the District Judge (Family Court), Pathankot, whereby the petition filed by him under Section 9 of the Hindu Marriage Act, 1955 (in short “the Act”) for restitution of conjugal rights has been dismissed, the appellant-husband has approached this Court by way of instant appeal.

2. Shorn of unnecessary details, the facts relevant for the disposal of the instant appeal as narrated therein may be noticed. The marriage of the parties was solemnized on 10.8.2009 at Sujampur, Tehsil and District Pathankot as per Hindu rites and ceremonies. After the marriage, both the parties lived together as husband and wife and out of the said wedlock, no child was born. After some time of the marriage, the respondent started behaving rudely with the appellant and his relatives. She used to pick quarrel and started to compel the appellant to live separately from his

parents. When he refused to do so, the respondent in November, 2012 on

the occasion of Tika ceremony, left the protection of her husband without his consent and since then she was living in her parental home. The appellant and his parents approached the respondent on various dates to reconcile the matter but she flatly refused to come back to the matrimonial home. Even the appellant offered her that they would live separately in the hired accommodation in the same village, but to no effect. The respondent being legally wedded wife of the appellant, it was obligatory upon her to come and join the company of the appellant but she did not join. In this way, the respondent had left the society of the appellant without any reasonable or sufficient cause. Accordingly, the appellant filed a petition under Section 9 of the Act for restitution of conjugal rights. The said petition was resisted by the respondent by filing a written statement. It was pleaded therein that the parties had taken mutual divorce from one another on 10.8.2013 on an affidavit in the presence of the witness. The name of the witness mentioned in the affidavit was duly attested by the Notary. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the trial court framed the following issues:-

“1. Whether the respondent has withdrawn from the society of the petitioner without any reasonable cause? OPR

2. Relief.

3. In support of his case, the appellant besides tendering his affidavit Ex.PW1/A, appeared as PW1 and examined Savita Devi as PW2 who tendered her affidavit Ex.PW2/A. To rebut the evidence of the appellant, the respondent examined herself as RW1 and tendered her

affidavit as Ex.RW-1/A and also examined her father Santokh Raj as RW2 who tendered his affidavit as Ex.RW2/A.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 against the appellant holding that the respondent was living separately from the appellant with sufficient cause and, therefore, the appellant was not entitled to a decree of Restitution of Conjugal Rights. Accordingly, the trial court vide judgment and decree dated 19.8.2016 dismissed the petition filed under Section 9 of the Act. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the respondent had withdrawn herself from the company of the appellant without any reason and cause. It was further contended that the appellant made efforts directly and through panchayats to bring the respondent back to her matrimonial home but her parents refused to send her. According to the learned counsel, the trial court had misread the evidence led by the parties and wrongly dismissed the petition filed by the appellant.

6. After hearing learned counsel for the appellant, we do not find any merit in the contentions of the learned counsel for the appellant.

7. Section 9 of the Act provides for 'Restitution of Conjugal Rights'. It reads thus:-

“9. Restitution of conjugal rights.- When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such

petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation.- Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.”

8. According to the aforesaid provision, where either spouse has withdrawn from the society of the other without any reasonable cause, the aggrieved party is entitled to seek restitution of conjugal rights by presenting a petition to the District Court who on satisfying itself about the truthfulness of statements made in such petition and in the absence of any legal impediment in granting such petition, pass decree for restitution of conjugal rights. Under the Explanation, in a situation of dispute relating to reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse is on the person who has withdrawn from the society.

9. The trial Court examining the factual scenario herein noticed that the respondent in her cross-examination stated that the appellant had gone abroad after 20/25 days of the marriage and came back on 3.7.2011. When he came back, she was at home. The appellant stated that their mutual consent divorce was done on 6.2.2012 but voluntarily added that no mutual divorce had taken place between the parties and such documents were fabricated and obtained fraudulently. He stated that he had not put any signatures on the alleged documents. However, in the pleadings, the appellant was silent about the divorce deed and only pleaded that if any document was being produced by the respondent, that was bogus and not

legally valid, under coercion, threats and not binding upon his right. But in his cross-examination, the appellant admitted the divorce deed. It had come during the cross-examination of the appellant that the respondent after execution of divorce deed had remarried. The trial Court had held that the appellant cannot be allowed to take advantage of his own wrong of playing with the emotions of the respondent by first executing divorce deed against her and when she got remarried after the execution of the divorce deed, he filed a petition for restitution of conjugal rights. It was further held that the respondent was living separately from the appellant with sufficient cause and therefore, the appellant was not entitled to a decree for Restitution of Conjugal Rights.

10. The Trial Court on appreciation of evidence dismissed the petition for restitution of conjugal rights with the following findings:-

“10. The respondent when subjected to cross examination stated that after the marriage he had gone abroad after 20/25 days. Thereafter, he came back to home from abroad on 03.07.2011. He further stated that when he came back from abroad, his wife respondent was at home. He also stated that their mutual consent divorce were done on 06.02.2012, but was volunteered to add that no mutual divorce has been effected between the parties, such documents were fabricated and obtained fraudulently. He also admitted as correct that the signature on the mutual consent divorce deed belongs to him. He further stated that he has not put any signature on the alleged documents. He also stated that he objected

to the remarriage of respondent with some other person but she did not accede to his genuine request and married. He also admitted as correct that there were signatures of four witnesses on the mutual consent divorce deed and stated that he knows the names of four witnesses namely Om Parkash, Kamal Kumar, Maya Devi.

11. In the pleadings the respondent is silent about the divorce deed. He only pleaded that, "if any documents is being produced by the respondent that is bogus and not legally valid, under coercion, threats and not binding upon the right of petitioner". But when subjected to cross examination as observed earlier, he admitted the divorce deed but opted to say that his signatures were obtained fraudulently. It has also come on record during cross examination of petitioner that respondent after execution of divorce deed has remarried. Had the signatures of petitioner on the said divorce deed be obtained fraudulently, he would have preferred the same in the pleading itself. Rather he is silent about the divorce deed in the pleading itself and made a vague reference of alleged "bogus and not legally valid, under coercion, threats and not binding upon the right of petitioner", document. The petitioner cannot be allowed take advantage of his own wrong of playing with the emotions of respondent by first executing divorce deed against her

and when she remarried after execution of divorce deed, the petitioner filed petition for restitution of conjugal rights. In this case, the legality of divorce deed or the second marriage of respondent is not to be adjudicated upon. The only point to be determined is whether respondent is living separately from the petitioner with sufficient cause. No self respecting woman will join the company of petitioner/husband when the husband opted to execute divorce deed against wife, creating circumstances for to remarry. Therefore, only conclusion that can be drawn is that respondent/wife is living separately from the petitioner with sufficient cause and the petitioner/husband is not entitled for decree of Restitution of Conjugal Rights against his wife/respondent.”

11. In view of the findings recorded by the trial court which could not be demonstrated to be perverse or erroneous in any manner being based on misreading or misappreciation of evidence, no fault could be found with the same. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 22, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes