

FAO-M-130-2015

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

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Date of Decision: 6th December, 2017

Seema

...Appellant

Versus

Parveen

...Respondent

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

Present: Mr. K.D.S Hooda, Advocate
for the appellant.

Mr. Ajay Shekhawat, Advocate
for the respondent.

AUGUSTINE GEORGE MASIH, J.

The petition under Section 13 of the Hindu Marriage Act filed by the appellant-wife Seema for dissolution of marriage with respondent-husband Parveen by way of decree of divorce on the ground of desertion, stands dismissed by the Additional District Judge, Rohtak, on 07.03.2015, which judgment has been challenged in the present appeal.

2. The marriage between the parties was solemnized on 07.03.2000 at Rohtak, according to the Hindu rites and ceremonies and they lived together as husband and wife at village Bond Kalan. The first female child namely Simran was born on 25.01.2001 at Rohtak at the parental home of the appellant. None of the family members from her matrimonial home came to meet her rather respondent-husband refused to talk to her on phone. Many panchayats were convened and on that basis,

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she was taken back in her matrimonial home in the month of March, 2003. The parties again cohabited and another child (male) namely Kamal was born on 24.02.2004 at her parental house. The same story again repeated, however, she was taken back to her matrimonial home in the year 2005. She was given beatings by the respondent-husband on trivial matters at the instance of his mother. Thereafter, to save the marriage, the parents of the appellant made arrangement and the respondent started doing some private job at Faridabad where he alongwith the appellant and children started to stay. After two months, he left the job and came back to his village Bond Kalan.

3. On 16.01.2006, the appellant was given severe beatings by the respondent-husband and his mother and was turned out of her matrimonial home alongwith the children. The children who were playing at home were picked up and taken away by the mother of the respondent with an assurance that she would be taken back to her matrimonial home a week thereafter, the children were taken away from her. She was not allowed to meet her children by the respondent-husband and since January, 2006, she has been forced to live with her parents at Rohtak, whereas, respondent is living at Bond Kalan by deserting the appellant-wife. All efforts made by her to go back to her matrimonial home have failed.

4. Reply to the petition was filed, in which, all the allegations made by the appellant have been denied rather it has been stated that she had herself left the matrimonial home. All efforts were made by the respondent-husband to bring her back and accordingly, she had been joining

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her matrimonial home off and on. An assertion was made that she had joined the matrimonial home but had again gone back to her paternal home. In fact she is herself not joining his company. Considering the pleadings of the parties, learned Additional District Judge, Rohtak, vide order dated 07.03.2015, dismissed the petition filed by the appellant-wife by holding that there has been no desertion on the part of the respondent-husband on the basis of the reply filed by him. It is, this judgment, which is under challenge in the present appeal.

5. An application under Section 24 of the Hindu Marriage Act, 1955, was filed by the appellant-wife, which came up for hearing before this Court on 16.02.2017, which was allowed and the appellant was granted a sum of ₹ 3,000/- per month towards maintenance *pendente lite* from the date of the application i.e. 01.04.2015.

6. The case, thereafter, was taken up for hearing on 25.09.2017, when the counsel for the respondent stated that he has got no instructions from the respondent-husband pertaining to clearance of the arrears of maintenance *pendente lite*. The Court was of the view that the defence of the respondent deserves to be struck off for non-payment of arrears of maintenance *pendente lite* but on a submission made by the counsel for the respondent that there are still chances of amicable settlement, the Court directed the respondent-husband to appear before the Court on 27.10.2017 at 2.30 PM alongwith entire arrears of maintenance *pendente lite*. The appellant was also held entitled to ₹ 2,000/- as conveyance allowance payable by the respondent in addition to the arrears of maintenance

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pendente lite on the next date of hearing i.e. 27.10.2017.

7. On the said date, an amount of ₹ 2,000/- towards travelling expenses, as directed by this Court, was paid to the appellant in Court, however, the respondent-husband expressed his inability to pay any amount towards arrears of maintenance *pendente lite*. Faced with this situation, the Court proceeded to strike off the defence of the respondent-husband.

8. On 06.12.2017, when the case came up for hearing, this Court sought response from the counsel for the respondent as to whether the husband is still not ready to pay the arrears of maintenance *pendente lite*, to which, counsel for the respondent-husband categorically stated that he has got clear instructions to inform this Court that the respondent-husband is not agreeing rather not ready to pay any amount of maintenance *pendente lite*.

9. In the light of the conduct of the respondent-husband in not paying the meager amount of maintenance of ₹ 3,000/- per month to the appellant-wife substantiates the trustworthiness of the allegations of the appellant, which she has made about desertion by him, which are reiterated in her statement before the trial Court. The striking down of the defence of the respondent-husband has the effect that the pleadings of the respondent-husband are treated to be not existing in the eyes of law. The pleadings of the appellant-wife has to be treated as un-rebutted, which have to be accepted as it is.

10. In these circumstances, the present appeal is allowed. The impugned judgment and decree dated 07.03.2015 passed by the Additional District Judge, Rohtak, is hereby set aside and the petition of the appellant-

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wife under Section 13 of the Hindu Marriage Act, 1955, is allowed. The marriage between the parties is dissolved by decree of divorce without prejudice to the rights of the appellant-wife to seek custody of the children or maintenance till she remarries.

11. The decree sheet be prepared accordingly.

(M.M.S. BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

6th December, 2017
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No