

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

226

FAO No.M-387 of 2015

Date of Decision: October 31st, 2017

Sonia

...Appellant

Versus

Bijender @ Kala

...Respondent

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

Present: Mr. Sansar Kundu, Advocate
for the appellant.

Respondent *ex parte*.

AUGUSTINE GEORGE MASIH, J.

Appellant-wife, who had filed a petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'H.M. Act'), for grant of a decree of divorce against the respondent-husband by dissolving their marriage, which was solemnised in November 2017, has filed the present appeal challenging the judgment and decree dated 21.08.2015 passed by the Additional District Judge, Jind, whereby her petition stands dismissed.

2. Despite service having been effected upon the respondent-husband, none had put in appearance on his behalf on 14.02.2017 when he was proceeded against *ex parte*. Today also, neither he himself nor any counsel has appeared on his behalf. Faced with this situation, we are left with no option but to decide the case on the basis of the pleadings and the evidence on record in his absence.

3. Appellant-petitioner, who had filed a petition under Section 13 of the H.M. Act seeking decree of divorce on the ground of cruelty, asserted

that her marriage was solemnised with the respondent in the month of November 2007, at Narwana, District Jind, according to Hindu rites and ceremonies. She was 14 years of age at the time of marriage, whereas the respondent was 35 years old. The marriage was performed under pressure from her parents. Out of the wedlock, one daughter namely Khushi was born. The factum that her husband was earlier married was not disclosed to her. After a few days of the marriage, tension prevailed in the matrimonial home due to frequent quarrels and she was maltreated and given beatings apart from facing very rude and rough behaviour not only from respondent-husband but other members of the matrimonial home. Demand of dowry was also alleged apart from asserting that the respondent was a drug addict and consumes liquor daily with his friends and also indulged in gambling, to which when objected by the appellant-petitioner, led to her being beaten and ridiculed in front of his friends and other family members. Even the brothers of the respondent had compelled her to make illicit relations with them. On objecting and making complaint to the respondent, he instead of protecting her, supported his brothers. This continued upto 15.12.2013 when after giving merciless beatings, she was turned out of her matrimonial home. Even her own mother did not permit her to reside in her parental home forcing her to reside in a rental house at Jind. Despite best efforts made by her to return to matrimonial home, she had not been permitted, rather the respondent refused to keep the appellant-petitioner in his company. On these assertions, decree of divorce has been prayed for.

4. Respondent-husband appeared and filed written statement wherein he admitted that the marriage had taken place on 25.11.2007 and

that a daughter was born to them. Age has been asserted of the appellant as 19 years at the time of marriage. The factum that the respondent was already married, has been denied as also the assertions with regard to the demand of dowry and cruelty towards her, rather it has been asserted that the appellant-petitioner did not adjust with the respondent and his family and started disliking him. She used to quarrel on petty matters and misbehaved with the respondent. Even the domestic responsibilities were not taken care of by her. It was, however, admitted that she had left her matrimonial home. Thereafter, following issues were framed on 22.09.2014:-

1. Whether the petitioner is entitled to decree of divorce on the ground of cruelty as mentioned in the petition? OPP.
2. Whether the petition is not maintainable in the present form? OPR.
3. Relief.
5. On an application filed under Section 24 of H.M. Act, ₹1,200/- per month was fixed as maintenance *pendente lite* from the date of application and ₹3,300/- as litigation expenses. The arrears were not paid in full. Subsequently, none appeared for the respondent and he was proceeded against *ex parte* by order dated 03.07.2015. *Ex parte* evidence was led by the appellant-petitioner. However, the Court did not accept the claim of the appellant-petitioner and proceeded to dismiss the petition for divorce.
6. We have gone through the pleadings and the evidence on record and find that the appellant-petitioner has been able to establish the ground of cruelty for grant of a decree of divorce as prayed for in her petition.

7. By order dated 22.09.2014, the trial Court had fixed maintenance *pendente lite* of ₹1,200/- per month from the date of application with ₹3,300/- as litigation expenses. On 05.01.2015, an amount of ₹4,000/- was paid as part payment towards arrears of maintenance but thereafter despite sufficient opportunities having been given, no payment has been made towards arrears of maintenance until he was proceeded against *ex parte* on 03.07.2015. The learned Court below had failed to exercise its powers to strike down the defence of the respondent-husband when the arrears of maintenance *pendente lite* had not been paid as ordered on 22.09.2014. Section 23 of the H.M. Act has also not been taken into consideration.

8. The Hon'ble Supreme Court while dealing with the provisions of Section 23 in *Hirachand Srinivas Managaonkar Versus Sunanda 2001 (4) SCC 125* has held that by refusing to pay maintenance to the wife, the husband has failed to perform his duties and has committed a wrong within the meaning of Section 23 of the H.M. Act. This Court in *Subhash Versus Sheela Devi 2007 (1) RCR (Civil) 165* as also in *Jai Bhagwan Versus Kamlesh 2005 (3) RCR (Civil) 224* has held that when the husband fails to pay the maintenance *pendente lite* and litigation expenses despite having been given opportunity to do so, his defence has to be struck off. The effect thereof would be that there is no written statement on record.

9. In the light of the above position in law, the trial Court has failed to discharge the legal obligation by not striking down the defence of the respondent. Therefore, we proceed to do so and strike out the defence of the respondent-husband. Thus, there is no written statement of the

respondent on record as a consequence of the above order. The respondent has chosen not to cross-examine the witness. There being no cross-examination of the appellant-petitioner, the statement of the appellant-petitioner has to be accepted as it is treating it to be unrebutted. If that be so, the same has to be accepted as such.

10. In her evidence, appellant-petitioner has categorically stated with regard to cruelty that she had been subjected to maltreatment, beating as also the demand of dowry. She has been thrown out of the matrimonial home and has been made to sleep with the brothers of the respondent. On objections raised by the appellant-petitioner, the respondent did not support her and gave her beatings. It has also been stated by her that the respondent is a drug addict and consumes liquor with his friends in the house and indulged in gambling, on which when she objected, the respondent gave her merciless beatings and slapped her. Assertion has also been made that the cruelty towards her increased day by day and she was put to great difficulty day in and day out. On 15.12.2013, respondent-husband had given her merciless beatings on account of demand of dowry and turned her out of the matrimonial home. Despite making efforts to stay in her parental house, she was not permitted to do so forcing her to reside in a rented house. She was being treated like an animal and put to utmost disgrace in the matrimonial house. The respondent had withdrawn himself from the society of the appellant-petitioner without any reasonable and sufficient cause and had refused to keep her in his company. There is no challenge to the statement of the appellant-petitioner and, therefore, the said statement is to be accepted. This proves cruelty having been committed on the appellant-petitioner at the hands of the respondent. The ground of

cruelty having been established, the appellant-petitioner is entitled to the decree of divorce as prayed for.

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

12. The impugned judgment and decree dated 21.08.2015 is hereby set aside.

13. Petition under Section 13 of the H.M. Act for grant of decree of divorce preferred by the appellant-petitioner is hereby accepted and the decree of divorce is granted to the appellant-petitioner.

14. Let a decree sheet be prepared accordingly.

(M.M.S. BEDI)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

October 31st, 2017

Puneet

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No