

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M-396 of 2015 (O&M)

Date of Decision: October 27, 2017

Amandeep Kaur

.....Appellant

Vs.

Sukhram Singh

.....Respondent

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

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Present: Mr. J.S. Dhaliwal, Advocate for the appellant.
Respondent Sukhram in person.

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M.M.S. BEDI, J.

Wife has preferred this appeal against the judgment and decree dated August 12, 2015 dissolving the marriage of the parties under Section 13 of the Hindu Marriage Act. The respondent/ husband had filed a petition under Section 13 of the Hindu marriage Act for dissolution of marriage alleging that the marriage was solemnized on February 15, 2010 without any dowry. A female child Navneet Kaur was born out of the wedlock in September 2011. While levelling allegations of cruelty it has been averred in the petition that the appellant- wife is an abnormal lady not sincere to the matrimonial life. After four months of marriage she had left her matrimonial home without any cause. She had refused to accept the offer of the respondent to stay together. Panchayats were arranged as a result of which

she joined the matrimonial home but used to ill-treat and maltreat the husband as she never provided tea, coffee, etc. to him and refused to look after the guests and family members and used filthy and unholy words towards the respondent and his parents without any reason and excuse. She used to throw utensils and was in the habit of leaving the matrimonial home without information and intimation. Her stay in the matrimonial home was only 10 months after marriage. The appellant made 3/4 attempts to leave the matrimonial home on the basis of petty disputes. In the month of September 2011, a female child was born and when the respondent and his family members had gone to see the child the behaviour of the appellant and his family members was not good. It is claimed that the appellant had mentally tortured the respondent and it was impossible for him to live and cohabit with her. A compromise was effected between the parties by virtue of which they had mutually decided to dissolve their marriage and to lead an independent life and she had received Rs.5 lacs as life time maintenance and expenses on October 4, 2013 in proceedings under Section 13 B of the Hindu Marriage Act but at the time of second statement she had withdrawn her consent and did not return the amount as such she had committed breach of the terms of the compromise.

The appellant contested the divorce petition by filing reply. In the reply she claimed that a sum of Rs.12.65 lacs was spent by her parents but she was maltreated on the pretext of demand of dowry. The respondent gave brutal beatings to the appellant under the influence of liquor and intoxicant and after the birth of female child, his behaviour towards her became more cruel. In December 2011, the respondent- husband and his

parents gave beatings to her and turned her out of the matrimonial home. In order to save his family members from the criminal proceedings he had entered into compromise to file an application under Section 13 B of the Hindu Marriage Act and agreed to pay a sum of Rs.10 lacs. He had paid Rs.5 lacs at the time of recording of first statement but did not have Rs. 5 lacs at the time of final settlement.

On the pleadings of the parties, the following issues were framed:-

- “1. Whether petitioner is subjected to cruelty by the respondent? OPA
2. Whether respondent deserted petitioner without any reasonable cause? OPP.
3. Whether petition is maintainable? OPP.
4. Whether petitioner has no locus standi and cause of action to file the present petition? OPR.
5. Relief.”

Issue No.1 was decided in favour of the respondent and the marriage was dissolved by a decree of divorce on appreciation of the evidence produced before the Court.

During the pendency of appeal, the respondent-husband was required to pay a sum of Rs.30000/- as interim litigation expenses. He appeared through his counsel on April 18, 2017 but thereafter no one appeared for him and he was proceeded against ex-parte on July 25, 2017. On account of he having re-married during the pendency of the appeal, contempt proceedings have been initiated against him. Respondent was

summoned by bailable warrants in COCP. He appeared before the Court and gave an undertaking to pay the litigation expenses of Rs.20000/- in the shape of bank draft but he failed to fulfill the undertaking. Ex-parte proceedings were set aside against him subject to payment of Rs.5000/- in addition to sum of Rs.20000/- as interim litigation expenses. The respondent had undertaken to pay the cost on September 28, 2017. On October 13, 2017 he was present in the Court but did not bring sum of Rs.25000/- despite the demand of payment of cost by counsel for the appellant. In view of said circumstances this Court had no alternative except to strike off his defence in the appeal. The appeal was ordered to be taken up on October 27, 2017 on which date he expressed inability to pay any amount towards interim litigation expenses or the cost as a result of which appeal was taken up on merits.

The respondent in view of above circumstances was not entitled to claim divorce on any ground, on account of his default having not paid the litigation expenses as ordered by the Court but we have, in the interest of justice, even gone through the merits of the case. The lower Court has granted divorce to the respondent- husband on the ground that the appellant wife had caused mental cruelty to the respondent by filing an application under Section 13 B of the Hindu Marriage Act, getting her statement recorded along with that of respondent and resiling from her statement at second motion after having received a sum of Rs.5 lacs. It is apparent from the record that the respondent had not paid sum of Rs.5 lacs at the second motion stage. The said conduct of the husband has not been considered to be an act of cruelty.

We have considered the judgment of the lower Court in context to the statement of appellant as RW1 from where it is apparent that she admitted that she got her statement recorded on April 15, 2014 in proceedings under Section 13 B of the Hindu Marriage Act. Admittedly the parties had been residing separately since long. The lower Court was convinced with the fact that the husband had made best efforts to reconcile the matter by convening panchayats but the appellant refused to resume cohabitation. The said fact was considered to be a presumed desertion. The lower Court did not appreciate the fact that the appellant as RW1 had specifically stated that she was given brutal beatings by the respondent under the influence of liquor and other intoxicants after the birth of female child Navneet Kaur and in December 2011 the respondent as well as his parents had given brutal beatings and had turned her out of the matrimonial home. It was under those compelling circumstances that the appellant was pressurized to file application under Section 13 B of the Hindu Marriage Act and agree to receive a sum of Rs.10 lacs to part company. No doubt, sum of Rs.5 lacs had been received by her. It has also come on the record that a sum of Rs.12.65 lacs had been spent on the marriage as proved by the appellant and her father Mithu Singh by appearing as RW2. It was always open to the appellant to withdraw her consent after six months in proceedings under Section 13 B of the Hindu Marriage Act. The said right has been given under legislation. In case she had received a sum of Rs.5 lacs the said amount could either have been demanded back by the husband or it could have been adjusted in the account of maintenance to which a wife has got a statutory right. Merely because the appellant had at second motion, on non-receipt of

balance of Rs.5 lacs, having resiled will not ipso facto raise a presumption that she had deserted or had got an intention to desert especially when there are specific allegations against the husband and his parents of having treated the appellant with cruelty by giving unreasonable beatings under intoxication. The lower Court on merits also had not fairly treated the rights of the appellant wife.

In view of the above circumstances the judgment of the lower Court is legally not sustainable so far as the presumption of desertion has been drawn against her. The decree of divorce granted to the respondent is liable to be set aside for the reason of default on part of the respondent to pay the interim litigation expenses ordered by this Court and on ground of wrong findings arrived at by the lower Court regarding appellant having deserted the respondent.

The appeal is allowed. The judgment and decree passed by the lower Court is set aside without prejudice to the rights of the appellant to legally proceed against the respondent for having remarried during the pendency of the appeal in contempt proceedings and other proceedings available to the appellant.

(M.M.S. BEDI)
JUDGE

October 27, 2017
sanjay

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.