

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3710-2017 (O&M)

Date of Decision: 30.5.2017

Joginder Singh

....Appellant.

Versus

Gurpinder Kaur

...Respondent.

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

PRESENT: Mr. Munish Puri, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Delay of 13 days in refiling the appeal is condoned.
2. This appeal has been filed by the husband against the judgment and decree dated 15.12.2016 passed by the District Judge (Family Court), Pathankot, whereby the petition filed by the wife under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce, was allowed.
3. Sans unessentials, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The respondent-wife (hereinafter described as 'the respondent') filed a divorce petition, *inter alia*, pleading that the marriage of the parties was solemnized on 18.5.2005 at village Checha, Tehsil and District Amritsar according to Sikh rites. After the marriage, both the parties resided together as husband and wife at village Allowal, Tehsil and District Gurdaspur for one year only. However, no child was born from the said wedlock. The appellant-husband (hereinafter referred to as 'the appellant') was a quarrelsome, rude, ill mannered and had made the life of the respondent a living hell. He had

been threatening her to have illicit relationship with other persons. The appellant on a number of occasions pressurized the respondent to meet the demands of money. The appellant used to beat her and forcibly got her aborted thrice against her wishes. She was subjected to slow poisoning with an intention to kill her. On 10.6.2006, when the appellant came home, he beat the respondent with 'Lathi' and threw the household articles and clothes all around in the room. When she told this to her in-laws, the appellant turned her out from the matrimonial home. The relatives of the respondent tried to compromise with the appellant but he refused to do so. Her father was habitual drunkard and forcibly married his daughter with the appellant who is 25 years elder to the respondent. Even the children from the first marriage of the appellant were of the same age of the respondent. The respondent is a Clerk in the Government Senior Secondary School, Dhar Kalan and from the outside of the school, the appellant along with 3-4 unknown persons attempted twice to kidnap the respondent. She filed a complaint in this regard with the Police Station Dhar Kalan, but no action was taken thereon. The respondent earlier filed a similar petition under Section 13 of the Act which was dismissed in default vide order dated 21.8.2013. Through the instant petition, she prayed for a decree of divorce by dissolution of marriage. Upon notice, the appellant-husband contested the divorce petition by filing a written statement. Besides raising various preliminary objections, it was pleaded that earlier the respondent-wife had filed a petition under Section 13 of the Act which was dismissed in default and the same had not been restored till date and, therefore, the second divorce petition was not maintainable. It was further pleaded that the appellant used to give respect to the respondent and her family members and

remained helpful in the problems of her parents and had also given economic help to them. In the year 2006 when the respondent got the Government job in the Education Department, she started quarrelling with the appellant on trifles who made his best efforts to reconcile amicably but in January, 2009, the respondent left her matrimonial home without any reasonable cause and since then she was residing at the place of her posting. The appellant had never demanded any dowry from the respondent and he still wanted her company. The other averments made in the petition were denied and a prayer for dismissal of the petition was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the respondent treated the petitioner with cruelty, mental as well as physical? OPP
2. Whether the respondent deserted the petitioner without sufficient cause? OPP
3. Whether the petitioner is entitled for dissolution of marriage by way of decree of divorce? OPP
4. Relief.

4. The respondent in support of her case, examined herself as PW1 and tendered her affidavit Ex.PW1/A. On the other hand, the appellant appeared himself as RW1 and examined his maternal uncle Darshan Singh as RW2. Both the witnesses had also tendered their respective affidavits Ex.RW1/A and Ex.RW2/A.

5. The trial court on appreciation of evidence led by the parties held that the respondent was subjected to mental as well as physical cruelty and wilfully deserted by the appellant and, therefore, she was entitled to a decree of divorce from her husband on that ground. Accordingly, the trial

court vide judgment and decree dated 15.12.2016 allowed the divorce petition and dissolved the marriage between the parties by a decree of divorce. Hence, the present appeal.

6. Learned counsel for the appellant submitted that the trial court had wrongly allowed the divorce petition as the appellant never treated the wife with cruelty and false allegations were levelled by the respondent-wife.

7. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

8. Admittedly, the marriage of the appellant with the respondent was his second marriage. As per the statement of the appellant, he had grown up children and his elder daughter was married. The respondent in her affidavit Ex.PW1/A had specifically stated that there was age gap of 25 years between her and the appellant. During her cross-examination, the respondent had stated that the father of the appellant wanted her to live with the appellant. Since the appellant was giving economic help to the parents of the respondent, therefore, her father was asking to join the company of the appellant. Further, marrying a daughter with a person who is 25 years older to her against her wishes was itself cruelty to the daughter. Considering the allegations levelled by the respondent against the appellant that she was giving beatings, amounted to mental as well as physical cruelty. The trial Court on appreciation of evidence produced on record had rightly concluded that the wife was being treated by the husband with cruelty with the following observations:-

“11. Thus, evidence on record reveals that the marriage of respondent with petitioner is his second marriage. He has already grown up children. As per statement of

respondent his elder daughter is married. His son is about 25 years and his younger son is 22 years age. The petitioner in her affidavit specifically stated that there is age gap of 25 years between her and respondent. It has also come on record during the cross-examination of petitioner that father of the respondent wants the petitioner to live with the respondent. Respondent also stated in his affidavit RW1/A that he used to help the parents of petitioner economically. This means that since the respondent was rendering economic help to father of the petitioner, the father of the petitioner was asking her to join the company of respondent. Marrying a daughter with a person who is 25 years elder to her is itself cruelty to the daughter. It seems that because of economic hardship, father of the petitioner marries her off to the respondent. There can hardly be mental as well as physical compatibility between the couple when the age gap is 25 years. The age gap of 25 years because all the more aggravating, considering the allegations leveled by the petitioner against the respondent that she was given physical beatings by the respondent quite often. Giving the wife to beatings amounts to mental as well as physical cruelty.”

9. In so far as ground of desertion is concerned, the respondent deposed that she was turned out of her matrimonial home on 10.6.2006.

She further stated that when the appellant came home, he beat the

respondent with 'lathi' and behaved in a strange manner, throwing household articles and clothes all around in the room. The trial Court had correctly recorded that the sole testimony of the respondent was enough to prove the unusual behaviour of the appellant as she can explain what happened to her within the four walls of the house or what happened inside the bedroom. From the evidence on record, the trial Court further noticed that it was proved that the appellant deserted the respondent before she took the job and long desertion was enough to pass a decree of divorce in favour of the respondent especially when the appellant failed to prove that how many times he made efforts for reconciliation.

10. The findings recorded by the trial court have not been shown to be erroneous or perverse in any manner being based on misappreciation or misreading of evidence on record which may warrant interference by this Court. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.

11. There is a delay of 60 days in filing the appeal. CM-12148-CII-2017 has been filed for condonation of 60 days' delay in filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is disposed of as such.

(AJAY KUMAR MITTAL)
JUDGE

May 30, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes