

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3756-2017 (O&M)

Date of Decision: 31.5.2017

Krishan Kumar

...Appellant.

Versus

Smt. Sita Devi

...Respondent.

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

PRESENT: Mr. Jaininder Saini, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. The appellant-husband has approached this Court by way of instant appeal challenging the judgment and decree passed by the District Judge, Family Court, Hisar whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act”) filed by the respondent-wife for dissolution of marriage by a decree of divorce, was exparte allowed.

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 22.11.2011 at Rawalwas Kalan, Tehsil and District Hisar according to Hindu rites and ceremonies. They lived together as husband and wife and cohabited as such. However, no child was born from the said wedlock. The parents of the respondent had given sufficient dowry in the marriage but the appellant and his family members were not happy with the dowry given in the marriage and started harassing, humiliating and

torturing her for demand of dowry. The appellant and his family members used to give sedatives to her forcibly and she was forced to do household work. Thereafter, the respondent was brought back. Several efforts were made to settle the matter but the appellant refused to keep the respondent. A criminal case under Sections 498A, 406, 323, 34 of the Indian Penal Code was registered against the appellant and his family members. An application under Section 125 of the Code of Criminal Procedure was also filed against the appellant. Thereafter, the respondent filed a petition under Section 13 of the Act for dissolution of marriage between the parties by a decree of divorce. The said petition was contested by the appellant-husband by filing a written statement. Besides raising various preliminary objections, it was pleaded that the petition was filed on absolutely wrong and incorrect facts. In fact, the appellant-husband never treated the respondent-wife with cruelty rather it was she who used to treat him with cruelty. It was further pleaded therein that the respondent was never treated with cruelty for demand of dowry. She refused to join the society of the appellant in a petition filed under Section 9 of the Act for restitution of conjugal rights. The other averments made in the petition were denied. From the pleadings of the parties, the court below framed the following issues:-

1. Whether the petitioner is entitled for a decree of divorce on the ground of cruelty, as alleged in the petition? OPP
2. Whether the petitioner has been deserted by her husband-respondent as alleged in the petition? OPP
3. Whether the petitioner has no locus standi and

cause of action to file the present petition? OPR

4. Whether the petition is not maintainable in the present form? OPR

5. Relief.

3. When the case was fixed for filing reply to the application for striking off the defence of the appellant on 22.2.2017, he did not turn up and was, therefore, proceeded against exparte.

4. The trial court on appreciation of evidence led by the respondent, vide judgment and decree dated 26.4.2017 allowed the petition exparte holding that sufficient evidence was produced on record that the appellant after solemnization of his marriage with the respondent had treated her with cruelty and this caused a reasonable apprehension in her mind that it was harmful or injurious for her to live with him. Hence, the present appeal.

5. Learned counsel for the appellant submitted that no cruelty was ever meted out to the respondent but the trial court has wrongly granted a decree of divorce on that ground. It was further submitted that the false allegations were levelled by the respondent as no evidence was led by her to substantiate her statement and the allegations.

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

7. Section 13(1)(ia) of the Act empowers the Court to dissolve the matrimonial ties between the parties by a decree of divorce on a petition by either spouse where the said spouse has been treated with cruelty after the solemnization of the marriage. Cruelty has not been defined in the Act but various pronouncements of the Apex Court and other High Courts

have outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse treats the other and manifests such feelings towards him or her as to cause reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental. Whether a spouse is inflicted with physical cruelty or not, it can be judged on the basis of direct evidence whereas mental cruelty is to be inferred on analyzing the factual matrix of each case and drawing conclusion thereon.

8. The Apex Court in **Parveen Mehta v. Inderjit Mehta 2002(3) RCR (Civil) 529** had very elaborately analyzed the expression 'cruelty' as a ground of divorce under the Act. The relevant portion thereof reads thus:-

“Under the statutory provision cruelty includes both physical and mental cruelty. The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined under the Act. Probably, the Legislature has advisedly refrained from making any attempt at giving a comprehensive definition of the expression that may cover all cases, realising the danger in making such attempt. The accepted legal meaning in England as also in India of this expression, which is rather difficult to define, had been 'conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger.

XX	XX	XX
XX	XX	XX

21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behaviour by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

9. As per the averments, the dispute between the parties was with regard to physical, mental cruelty and demand of dowry by the appellant. The respondent proved her stand by her affidavit Ex.PW1/A that she was treated with cruelty in the matrimonial home as the appellant and his family members were not satisfied with the dowry given in the marriage and used to torture her for demand of more dowry. Further, the appellant and his family members used to give sedatives to the respondent and thereafter she was forced to do household works. All the above said instances show that the respondent was treated with cruelty by the appellant and it had caused a reasonable apprehension in her mind that it would be harmful and injurious for her to live with the appellant. The appellant was not able to rebut the evidence of the respondent and even the averments taken in the written statement were not proved on record in the absence of the evidence as the appellant had failed to appear after filing of the written statement and was proceeded against exparte. The cumulative effect of the facts and circumstances point out to an irresistible conclusion that the respondent was treated with cruelty.

10. The trial Court after appreciating the evidence had rightly concluded that the appellant, after solemnization of his marriage, with the respondent, had persistently and repeatedly treated her with cruelty and it caused a reasonable apprehension in her mind that it would be harmful or injurious for her to live with him. The relevant findings recorded by the trial court read thus:-

“10. Petitioner Smt. Sita Devi is legally wedded wife of respondent Krishan. The marriage was consummated, but no child was born to couple. The petitioner Sita Devi

in her evidence has testified through her affidavit Ex.PW1/A and has corroborated the contents of her petition that she was treated most unceremoniously in her matrimonial home. Respondent and his family members were not satisfied with the dowry given in the marriage and they used to torture her for demand of more dowry. Respondent and his family members used to give sedatives to her and thereafter she was forced to do household works. Every efforts made by her parents to settle the matter, proved futile. All these treatments have caused a reasonable apprehension in her mind that it would be harmful and injurious for her to live with the respondent.

11. There is no evidence in rebuttal on record. The averments raised in written statement are not proved on record in absence of evidence as respondent has elected to remain exparte. It is established from the evidence brought on record by the petitioner that the marriage has irretrievably failed and that the parties had separated for good since the year 2012.

12. There is sufficient evidence on record to believe that the respondent, after solemnization of his marriage with the petitioner, has persistently and repeatedly treated her with cruelty as would cause a reasonable apprehension in her mind that it would be harmful and injurious for her to live with him. His behaviour has

resulted in both physical and mental agony to the petitioner and she has good reasons to be apprehensive about her safety in the society of the respondent.”

11. No illegality or perversity could be pointed out by the learned counsel for the appellant in the aforesaid findings recorded by the trial court which may warrant interference by this Court. Accordingly, the present appeal being devoid of any merit, is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 31, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes