

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-83 of 2017

Date of Decision: 20.11.2017

Sukhwinder Kaur

. . . Appellant

Versus

Kashmir Singh

. . . Respondent

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

Present: Mr. Anupinder Singh, Advocate for
Mr. Nakul Sharma, Advocate
for the appellant.

M.M.S. Bedi, J. (Oral)

Despite service no one has put in appearance on behalf of the respondent.

Before proceedings ex parte against the respondent, we deem it appropriate to go through the facts and circumstances.

We have summoned the record and gone through the same.

The appellant-wife has preferred this appeal aggrieved by the dismissal of her petition for divorce on 17.11.2016 by the District Judge, Ferozepur. One of the reason for dismissal of her petition is mentioned in para 6 of the impugned judgment to the effect that the appellant had filed a similar petition for dissolution of marriage on the ground of cruelty. In that case, respondent appeared through counsel, but on

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31.08.2015, on the statement made by the counsel for the appellant, the same was dismissed as withdrawn. However, the appellant had mentioned, in para 20 of her petition that there was no previous proceedings between the parties with regard to their marriage except mentioned above. In para 12 of the petition, it is mentioned that the respondent-husband had filed a petition under Section 13 of the Hindu Marriage Act in which the appellant had appeared and filed written statement, but the same was dismissed as withdrawn. The learned Judge has observed that there is no mention of the earlier petition filed by the appellant under Section 13 of the Hindu Marriage Act, which was dismissed as withdrawn on 31.08.2015 and has not disclosed as to how and why the petition filed by the respondent against her had been dismissed.

We have considered the pleas in the context to the requirement of order VII Rule 1 CPC. As per the local amendment dated 15.03.1991, the order VII Rule 1 CPC, as it stood on 15.03.1991 in the provisions of CPC reads as follows:-

“Punjab.- In order VII, in Rule 1, after clause (i), insert the following clause namely:-

“(i) a statement to the effect that no suit between the same parties, or between parties under whom they or any of them claim, litigating on the same grounds has or limited jurisdiction, and if so, with what results.

[Vide G.S.R. 17/C.S.C./1908/S.122/78, dated 15th March 1991.]”

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A perusal of the above said provision indicates that it is the duty of litigating party to disclose any previous litigation and the result. A perusal of para 6 of the impugned judgment indicates that para 20 of the petition for divorce had to be read along with para 12 of the petition under Section 13 of the Hindu Marriage Act. The requirement of law is to disclose the result of previous litigation *inter se* the parties.

In view of the above said circumstances, we do not find any technical bar in the petition for divorce filed by the appellant.

So far as the pleadings regarding cruelty of the respondent is concerned, no specific order has been passed by the learned lower Court.

The appellant has pleaded that the behavior of the respondent had been cruel to the appellant and he was a drug addict person and used to quarrel with her on petty matters and used to give beatings and demand more dowry articles as well as money. She was locked in the room without food and water. On 08.05.2005, one of her younger brother in law, who had been living at Bathinda, had died. The appellant along with her husband stayed in the grief stricken home for about 10 days, but after Bhog Ceremony she was asked to go to her parental house at Ferozepur. The appellant kept on waiting for the respondent to call her but the respondent did not contact her despite the attempts made by her to call him telephonically a number of times. She was informed by her mother-in-law that the respondent had gone to Italy on 28.05.2005 as his flight was already scheduled, but the appellant was never told about the said plan. She was asked to stay at her parental home till he returned from Italy. Many a times the appellant asked her mother in law to allow her to

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stay in matrimonial home, but the appellant was not allowed to enter in her matrimonial home. A sum of Rs.3 lacs was finally demanded by mother in law for allowing the appellant to stay in her matrimonial home. The respondent returned from Italy on 01.01.2007, but he was not well as informed by her father-in-law. Then the appellant had gone to her matrimonial home at her own. The respondent has remained 8-10 days as indoor patient in the hospital and was looked after by the appellant as attendant, but she was not allowed to live in the matrimonial house without any rhyme or reason. Finally, the appellant was turned out of her matrimonial home in 2007 and was left at the mercy of her parents at Ferozepur. Many a time, attempts were made by the appellant and her parents along with some other respectable not to harass appellant and keep her with love and affection, but the respondent did not pay any heed to requests of Panchayat and insulted the Panchayat, as a result of which she had to come back.

The above said pleadings have been substantiated by the affidavit of appellant, Annexure P-2, while appearing as PW-2. Her plea is supported by the testimony of PW-1 Harvinder Singh, in the shape of affidavit Annexure P-1. Her stand has been corroborated by Harvinder Singh, who being her brother, is aware of the facts.

The respondent despite service had opted not to appear before the lower Court. In these circumstances, we are satisfied that the ground of cruelty stood established. The appellant has given specific reasons of maltreating and turning her out of the matrimonial house as without intimating her the respondent had left India. She attended her

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husband on return from Italy in the hospital, but she has not been still accepted. There are allegations of demand of dowry. The conduct of the respondent and his family members is a glaring example of cruelty with which the appellant has been treated without any reason.

In view of the above said circumstances, the un rebutted evidence produced by the appellant was required to be considered for the purpose of proving the cruel act of the respondent.

The respondent has been served in the present appeal. Respondent had earlier been served on 14.07.2017, but despite service he has not put in appearance. As such, he has been proceeded against *ex parte*.

We have considered the judgment of lower Court hereinabove. So far as the petition under Section 13 of the Hindu Marriage Act having been knocked out on the technical ground of not fulfilling the requirement of order VII Rule 1 (j) C.P.C., findings in para 6 of the impugned judgment are set aside. So far as the finding regarding cruelty in para 7, these being non-speaking are also liable to be set aside.

The appeal is accepted. The impugned judgment and decree are set aside in its entirety. The petition under Section 13 of the Hindu Marriage Act is allowed

The marriage of the appellant with respondent is dissolved by a decree of divorce on the ground of cruelty.

It will be open to the appellant to claim any amount or dowry articles in accordance with law, if so advised.

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Anything said in this order is meant for determination of the
conduct of cruelty for the purpose of present petition only.

Decree sheet be prepared.

[M.M.S. BEDI]
JUDGE

[AUGUSTINE GEORGE MASIH]
JUDGE

November 20, 2017

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Whether Speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No