

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

CR No.8375 of 2017
Date of decision : 19.02.2018

Amandeep Kaur

...Petitioner

Versus

Gurdev Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Gupta, Advocate for the petitioner.

Mr. Veneet Sharma, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

The petitioner-wife is aggrieved of the order passed by the learned trial Court dated 24.10.2016.

I have heard the learned counsel for the parties at length and with their able assistance gone through the paper book.

Husband had filed a petition under Section 9 of the Hindu Marriage Act for restitution of the conjugal rights.

Learned trial Court after examining the pleadings of the parties initially framed the issues on 06.05.2016, which are extracted as under:-

- “1. Whether the petitioner is entitled to decree of restitution of conjugal rights? OPP*
- 2. Whether the petition is not maintainable and liable to be dismissed? OPR*
- 3. Whether the petitioner has not come to court with*

clean hands and suppressed material facts from the court and petition is liable to dismiss? OPR

4. *Relief.”*

Thereafter, on oral request, the Court framed further additional issues on 24.10.2016, which are extracted as under:-

“1. Whether respondent has not intentionally withdrawn society of petitioner? OPR

2. *Relief.”*

It is the contention of the counsel for the petitioner-wife who was respondent in the petition under Section 9 of the Hindu Marriage Act that the Court wrongly fixed the case straightway for the evidence of the respondent without even calling upon the petitioner to prove his case as pleaded in the petition.

Learned counsel has further drawn the attention of the Court to issue No.1 framed on 06.05.2016. The onus to prove whereof is on the husband-petitioner before the trial Court.

On the other hand, learned counsel for the respondent has vehemently opposed this revision petition and has submitted that since it is the duty of the petitioner-wife to prove as to why she withdrew from the society of the husband, therefore, the Court has correctly called upon the wife to start evidence.

In the considered opinion of this Court, it is for the petitioner-plaintiff who has to open its case. In the present case, onus to prove issue No.1 is on the husband, therefore, the trial Court committed an error in calling upon the wife to start evidence.

In view of the above, the impugned order dated 24.10.2016 is

partially modified.

Revision petition is allowed.

The husband would be called upon to lead his evidence in affirmative in the beginning.

19.02.2018
Pawan

(ANIL KSHETARPAL)
JUDGE

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