

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 8799 of 2017 (O&M)
Date of decision : May 21, 2018

Shaminder Kaur

..... **Petitioner**

Versus

Sandeep Kumar Sharma

..... **Respondent**

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. S. Ghuman, Advocate
for the petitioner.

Mr. Shiv Kumar Sharma, Advocates
for the respondent.

AMIT RAWAL, J (oral).

This revision petition is directed against the impugned order whereby an application filed by the petitioner-wife under Order 14 Rule 5 CPC for placing the onus of Issue No.2 on the respondent-husband instead of the petitioner-wife has been dismissed.

Learned counsel for the petitioner submitted that respondent-husband had instituted the petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'The Act') for dissolution of marriage on two counts i.e. cruelty and desertion and the trial court on the basis of submission of the parties on 22.4.2017 framed the following issues:-

- “1. Whether the respondent treated the petitioner with cruelty?OPP
2. Whether the respondent deserted the petitioner

with a reasonable cause?OPR

3. Whether the petitioner is entitled to decree of dissolution of marriage with the respondent?OPP

4. Whether the petitioner has concealed the material facts from the Court?OPR

5. Whether the petition on the ground of desertion is maintainable?OPR”

Since the respondent-husband had sought dissolution of marriage, the onus was on the respondent-husband and not on the petitioner-wife but despite that the application submitted in this regard i.e. the application for correction of onus has been dismissed. The said order is not sustainable in the eyes of law as the onus is always on the person who alleges the same.

Learned counsel appearing on behalf of the respondent-husband submitted that he has no objection with regard to correction of onus upon the respondent-husband but the petitioner wife is delaying the adjudication by moving one application or the other and seeks indulgence of this Court for issuance of appropriate direction to the trial court for expeditious disposal of the petition filed under Section 13 of the Act.

I have learned counsel for the parties and perused the paper book and of the view that the impugned order for correcting the onus put on the respondent-wife is not correct appreciation of law. The divorce petition is filed on two counts i.e. cruelty and desertion. The onus is upon the respondent-husband i.e. petitioner before the court below was to discharge the onus which would be shifted only after its discharge, resultantly impugned order is set aside. Onus on this issue shall be on husband-petitioner in divorce petition.

case, I deem it appropriate to dispose of the revision petition with a direction to the trial court to decide the petition filed under Section 13 of the Act as early as possible preferably within a period of one year from the date of receipt of certified copy of this order.

May 21, 2018
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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No