

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

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FAO-M-125-2007

Date of Decision: 07.08.2018

RAMA @ RAM GIRI

....Appellant.

Versus

BHARAT

...Respondent.

CORAM:- HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Ashish Kapoor, Advocate
for the appellant.

Respondent *ex parte*.

ANUPINDER SINGH GREWAL, J.

This appeal has been preferred by the appellant wife challenging the judgment and decree dated 03.04.2007 passed by District Judge, Rewari, whereby the petition of the respondent husband, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for divorce on the ground of cruelty and desertion, has been allowed.

The appellant wife and the respondent husband were married on 04.03.1995 at Jhajjar according to Hindu rites and ceremonies. No child was born out of the wedlock. It was the case of the respondent that immediately after the marriage on 05.03.1995, the appellant wife was taken to the matrimonial home but she refused to live there and had made her intention clear that she will not live with the parents of the respondent husband. She is also stated to have refused to

do any household work on 08.03.1995 when a friend of respondent husband namely Sh. S.P. Garg visited their house. The respondent husband had asked the appellant wife to prepare tea and snacks but she refused to do so and spoke in loud voice that none of his friend should visit their house and respondent husband was humiliated in the presence of his friend. She used to quarrel on petty matters and had refused to attend the Kuan Pujan Ceremony at their house on 13.03.1995 for the new born son of the elder brother of respondent husband. She left for her matrimonial home and took away all her jewellery and clothes without the consent of the respondent –husband. The respondent husband and his family members made several efforts to bring back the appellant but she refused to join his company. The respondent husband had also filed a divorce petition on 03.04.1996 but the matter was reconciled and he had withdrawn the petition on 21.08.1996. He is stated to have paid a sum of Rs.50,000/- to appellant wife on 10.08.1996. The appellant wife returned to the matrimonial home on 02.09.1996 but she again continued with her cruel behavior and threw out the old parents of the respondent-husband. She is also stated to have lodged a criminal case against the respondent husband and his family members under Section 498-A and 406 read with Section 34 of the IPC on 23.06.1996. It was also alleged by the respondent husband that he had been beaten up by the appellant wife and he had filed another divorce petition on 17.12.1996, which was dismissed in default. He filed yet another petition for divorce on the ground of desertion on 29.07.2000, which was compromised on 11.01.2001 and it is stated that the appellant wife had again beaten up the respondent husband.

These allegations were denied by the appellant wife in her written statement. She had admitted that on 08.03.1995, the friend of her husband Sh. S.P. Garg along with his brother-in-law Sh. Subhash Mittal had visited her matrimonial house but she denied that she refused to prepare tea or snacks or picked up any quarrel with the respondent husband. She also stated that she had attended the CHHATI ceremony on the birth of the son of the husband's elder brother and she denied that she deserted the respondent-husband or went back to her parental house on 13.03.1995. She had stated that on 14.05.1995, her husband had beaten her up and she was medically examined on 15.05.1995. She also contended that after the dismissal of the earlier petition preferred by her husband, she went to the matrimonial home but she was again beaten up mercilessly and turned out from the matrimonial home on 07.10.1996. She had been treated with cruelty by her husband and his family members in connection with demand of dowry.

The trial court framed the following issues:-

1. Whether respondent has, after the solemnization of marriage, treated the petitioner with cruelty ? OPP
2. Whether the respondent has deserted the petitioner for a continuous period of not less than 2 years immediately preceding the presentation of petition? OPP.
3. Whether the petition is not maintainable in the present form? OPR.
4. Whether the petition is barred by principle of resjudicata? OPR.
5. Relief.”

The respondent husband examined himself as PW-3, S.P.

Garg as PW-1, R.B. Joli as PW-2, Suresh Kumar as PW-4, Kailash

Chand as PW-5 and Krishan Kumar as PW-6.

On the other hand, the appellant wife appeared and examined herself as RW-1 and she also examined Har Kishan, Counsellor as RW-2, Manju Bala, Counsellor, Family Counselling Centre, Biwani as RW-3, Dr. A.S. Gupta as RW-4 and HC Rattan Lal as RW-5.

The trial Court by the judgment dated 03.04.2007 had decided all the issues in favour of the respondent husband and against the appellant wife.

Notices issued to respondent were received back with the report that respondent is missing from last 7-8 months, though notice was received by his father who stated that he would inform his son about the date of hearing.

This Court, by order dated 08.02.2018, after expressing satisfaction that the respondent has knowledge about the pendency of the appeal and has failed to appear before this Court, had proceeded *ex parte*.

Learned counsel for the appellant wife has contended that it was the respondent husband, who had, in fact, treated the appellant wife with cruelty by beating her up on several occasions which made it impossible for her to live with him. Therefore, no case was made out by the respondent husband for the grant of divorce on the ground of cruelty and desertion.

We have heard the learned counsel for the appellant and examined the record including the pleadings and the statements of witnesses.

It is evident that the appellant wife had been beaten up by the respondent husband on several occasions. She had also been

medically examined in this regard by Dr. A.S. Gupta, Medical Officer, General Hospital, Bhiwani on 15.05.1995 and as per MLR (Ex.RW4/A), she had received simple injuries. The MLR was produced on record by RW-4 in his evidence.

In such circumstances, it would be difficult for the appellant wife to continue to stay with the respondent husband. The appellant wife had got FIR No. 183 dated 23.06.1996 registered at Police Station Jhajjar against the respondent husband wherein the respondent husband was convicted by the Judicial Magistrate Ist Class, Jhajjar on 01.11.2003 (Ex. R-1) and sentenced to undergo rigorous imprisonment for 3 years while the family members of the respondent husband were acquitted. The appeal preferred by the respondent husband was also dismissed by the Additional Sessions Judge, Jhajjar on 09.11.2006.

The oral evidence led by the friend of the respondent husband, PW-1, Sh. S.P. Garg that when he had visited their house, the appellant wife had refused to prepare tea and snacks and had misbehaved with the respondent husband in his presence is hardly of any significance as mere refusal by wife to prepare tea and snacks for friend of the husband is too trivial an issue to constitute an act of cruelty for grant of divorce especially when it has categorically been denied by the appellant-wife.

The factum of the appellant wife, filing a criminal case against the respondent husband, cannot also amount to a cruel act on her part as the allegations against the respondent husband stood proved and he was convicted. She had suffered injuries, which were proved in the medical examination conducted by the Government Doctor who appeared as RW-4.

It is, thus, patent that the respondent husband had, in fact, treated the appellant wife with cruelty by beating her up which is proved from evidence on record and, therefore, the finding of the trial Court on issue No.1 needs to be reversed.

Furthermore, it has come in the evidence of RW-2, Manju Bala, who was posted as Counselor, Family Counseling Centre, Bhiwani in the year 1996, that on receipt of application from the appellant wife, respondent husband had been called for conciliation but he was quite adamant. The respondent husband had come for counseling with two companions but did not take any interest in reconciliation. She proved copy of report of counseling centre in this regard as Ex. RW-3/A.

It is, thus, established that the appellant wife was willing to stay with the respondent husband, provided he treated her properly and not indulge in violence.

We are, therefore, of the considered view that the findings of the trial Court with regard to the cruelty and desertion on the part of the appellant wife on issues No.1 & 2 are unsustainable from the evidence on record and are, thus, reversed.

Consequently, the appeal is allowed. The judgment and decree dated 03.04.2007 passed by the District Judge, Rewari is set aside. The petition filed by the appellant husband for decree of divorce under Section 13 of the Act is dismissed throughout.

Decree sheet be drawn accordingly.

(M.M.S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

07.08.2018.

SwarnjitS

Whether speaking/reasoned :

YES/NO

Whether reportable :

YES/NO