

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

**FAO-M-332-2011(O&M)
Date of decision:-26.11.2018**

Smt.Beeram Wati

....Appellant

Versus

Gajender Singh

....Respondent

**CORAM : HON'BLE MR. JUSTICE A.B.CHAUDHARI
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.Sanjay Vashisth, Advocate
for the appellant.

Mr.Sunil Chadha, Senior Advocate with
Ms.Swati Verma, Advocate
for the respondent.

H.S. MADAAN, J.

This appeal has been preferred against the judgment and decree dated 15.10.2011 passed by learned Additional District Judge, Palwal vide which he had allowed petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) filed by

petitioner Gajender Singh (herein respondent) against his wife respondent Smt.Beeram Wati (herein appellant) on the ground of cruelty.

The respondent – wife has knocked at the door of this Court by way of filing the instant appeal praying that the impugned judgment and decree passed by the trial Court be set aside and petition for divorce filed by her husband Gajender Singh be dismissed.

Briefly stated, the facts of the case are that Gajender Singh had filed a petition under the Act against his wife Smt.Beeram Wati on the averments that a marriage had taken place between them on 21.11.2000 at village Dhatir, Tehsil Palwal, District Faridabad (now District Palwal) as per Hindu religious rites and ceremonies; that after the marriage the couple started residing together as husband and wife at village Dhatir; that soon after the marriage, the respondent showed disrespect and hatred towards the petitioner as well as his parents and other family members humiliating and insulting them in front of their relatives as well as neighbours using contemptuous words; that she refused to do any household work; that the respondent left the matrimonial home without consent and knowledge of her husband without any reasonable cause in the month of February, 2005 and refused to join his company despite being asked by the petitioner to do so; that the petitioner had convened a panchayat seeking return of the respondent in the matrimonial home, however, the respondent levelled serious allegations against the petitioner to the effect that he was having illicit relations with his sister-in-law (Bhabhi) Smt.Baldei; thereafter, the respondent filed a criminal complaint against the petitioner for offences

Sections 406, 498-A, 506, 34 IPC wherein also she made similar allegations, resultantly the petitioner suffered mental pain and torture. According to the petitioner, the respondent has deprived him of enjoying his matrimonial life by consummation. According to the petitioner, the respondent had treated him with cruelty as such he sought dissolution of marriage by a decree of divorce.

On notice the respondent wife appeared and filed written statement contesting the petition raising preliminary objections challenging maintainability of the petition further contending that no cause of action arose to petitioner to file the petition; the petitioner was estopped by his own act and conduct from filing the petition; that the petition was nothing but a counter-blast to the criminal complaint filed by the respondent. The respondent alleged that the petitioner and his family members had been harassing her on account of demand of dowry; she was beaten and humiliated by the petitioner and his family members on account of demand of Maruti car. On merits while denying the allegations made in the petition, the respondent alleged that rather she was given severe beatings and turned out of the matrimonial home by the petitioner and his family retaining all her ISTRIDHAN articles. She denied that any Panchayat was convened by the petitioner. She reiterated the allegations with regard to her husband Gajender Singh having illicit relations with his sister-in-law (Bhabhi) Smt.Baldei. In the end, she prayed for dismissal of the petition.

On pleadings of the parties, following issues were stuck by the trial Court vide order dated 12.5.2010:

1. Whether the petitioner is entitled to a decree of divorce on the

grounds as alleged in the petition? OPP

2. Whether the petition is not maintainable in the present form?

OPR.

3. Whether the petitioner has no locus-standi and no cause of action to file the present petition? OPR.

4. Relief

In order to prove his case, the petitioner examined his father Raghbir Singh as PW1, who tendered in evidence his affidavit as Ex.PW1/A, whereas the petitioner himself had appeared as PW2. He further examined Shamsher Singh as PW3.

On the other hand, the respondent appeared as RW1 and she tendered in evidence her affidavit Ex.RW1/A. The respondent further examined Ramphool as RW2.

After hearing arguments, the trial Court decided issue No.1 in favour of the petitioner and against the respondent and issues Nos.2 and 3 were decided against the respondent. Resultantly, the petition was accepted and a decree of divorce dissolving the marriage between the parties was passed.

Such judgment and decree left the respondent-wife aggrieved and she has knocked at the door of this Court by way of filing the present appeal, notice of which was given to respondent – husband, who has appeared in the Court through counsel.

We have heard learned counsel for the parties besides going through the record and we find that there is no merit in the appeal.

In this case the factum of marriage between the parties

having taken place on 21.11.2000 at village Dhatir, Tehsil Palwal, District Faridabad (now District Palwal) as per Hindu religious rites and ceremonies is not disputed, which means that Smt.Beeram Wati acquired status of legally wedded wife of petitioner Gajender Singh. It is further not in dispute that both the spouses had been residing separately before filing of the divorce petition. Petitioner Gajender Singh had approached the Court seeking snapping of marital ties between the spouses on the ground of cruelty. Though the respondent wife Smt.Beeram Wati appeared and contested that ground coming up with her version that as a matter of fact she was a victim of cruelty perpetrated upon her by the petitioner and his family members on account of demand of dowry. But the trial Court by proper appreciation and appraisal of evidence has returned the finding that Beeram Wati has treated her husband with cruelty. A major part of the allegations by the petitioner was that his wife Beeram Wati had levelled allegations of his having illicit relations with his Bhabhi Smt.Baldei, which were obviously false. The respondent – wife in her written statement had rather asserted those allegations. Both the parties during the trial had led evidence. The trial Court in para No.12 of the judgment examined the aspect as to whether the allegation of illicit relationship of petitioner with Smt.Baldei are false or true and if the allegations are false whether that amounts to cruelty or not and observed that the divorce petition was filed on 30.7.2008, however, such allegations had been levelled by Beeram Wati in complaint Ex.P2 on 20.9.2007. The trial Court has noted that petitioner had examined himself as PW2 besides his father Sh.Raghbir Singh as PW1. Both of them had stated that such allegations

were false and as stated by PW1 Sh.Raghubir Singh, the age of Shamsher Singh husband of Smt.Baldei is 52 years and PW2 Gajender in his cross-examination stated that marriage between Shamsher Singh and Smt.Baldei took place 32 years ago and PW3 Shamsher Singh husband of Baldei stated that the marriage between him and Baldei took place in the month of May, 1977, whereas Gajender Singh was born in the year 1981 and his wife treats Gajender Singh as her son. The trial Court had noted that in that way, Baldei is 25 years elder to Gajender Singh, which factum negates the allegations leveled by respondent regarding the petitioner having illicit relations with Baldei and that onus was heavy upon the respondent to prove by leading cogent evidence such allegations, which she had failed to discharge. She had appeared as RW1 tendering her affidavit Ex.RW1/A reiterating such allegations but she could not explain any attending circumstance or surrounding facts which could indicate towards truthfulness of allegations. She had nowhere stated that she had seen Gajender and Baldei in any compromising position. She was unable to prove that Gajender visited Smt.Baldei discretely, which might have given rise to a suspicious circumstance in that regard. Therefore allegation levelled by her could not be proved by her and those were only bald allegations. Resultantly, the respondent had failed to establish the accusations levelled by her regarding infidelity of Baldei or the petitioner.

Vide detailed discussion, the allegations have been found to be false amounting to Beeram Wati – respondent treating the petitioner with cruelty.

The respondent has placed on file judgment in a complaint

case under Sections 498-A, 406, 506, 34 IPC filed by Beeram Wati against her husband Gajender Singh and his family members, which was dismissed by Sub Divisional Judicial Magistrate, Hodal on 11.11.2014, in which such allegations of illicit relations between Gajender Singh and Baldei had also been levelled but not found to be proved. The remaining allegations could also not be established. Resultantly, the complaint was dismissed.

Another judgment with regard to appeal under Section 29 of Protection of Women from Domestic Violence Act, 2005 filed by Gajender Singh against Smt.Beeram Wati and others delivered by Additional Sessions Judge, Palwal has been filed in that regard.

We come to the conclusion that the judgment passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. The said judgment is upheld whereas appeal is found to be without any merit and the same is dismissed accordingly.

26.11.2018
Brij

(A.B.CHAUDHARI)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No