

In the High Court of Punjab and Haryana at Chandigarh.

FAO-M-152 of 2013

Date of Decision : 17.1. 2018

Promila*Appellant*

Versus

Jasvinder*Respondent*

CORAM: Hon'ble Mr. Justice M.M.S.Bedi
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Ashwani Bakshi for the Appellant.
Respondent *Ex-parte*.

Gurvinder Singh Gill J.

1. Aggrieved by dismissal of her petition under section 13 of Hindu Marriage Act, 1955, seeking dissolution of her marriage with respondent, the wife (hereinafter referred to as appellant) has filed this appeal challenging impugned judgment dated 22.2.2013 passed by learned Additional District Judge, Rohtak.
2. The case set up by appellant, in her petition under Section 13 of the Hindu Marriage Act 1955, is that she was married to respondent on 6.12.2004 but no child was born out of the wedlock. Prior to marriage her parents were told that respondent was M.A. in Public Administration and was working as a General Manager, drawing a salary of ₹ 25,000/- per month which was incorrect.

Though it had been represented that he was a bachelor but later the appellant came to know that the respondent was a divorcee and was shown to have been disowned by his father on 25.8.2004 to avoid legal liabilities. The appellant averred that she resided with respondent for 5 days after marriage upto 11.12.2004 and returned to her matrimonial home on 14.12.2004 where she remained up to 2.3.2005. It is a case of the appellant that during her stay at matrimonial home, her husband, his father, his brother and sister-in-law humiliated and tortured her for having brought less dowry and demanded an amount of ₹ 5 lakhs. Upon appellant's inability to meet the said demand she used to be beaten mercilessly by them and was ultimately turned out of her matrimonial home on 2.3.2005. However, after 2 days, she was sent back to her matrimonial home. The respondent and his family continued with their maltreatment and harassment. On 10.2.2005, the respondent told her that he would not even have any physical relations unless an amount of ₹ 5 lacs was brought by her. She was not even permitted to enter his room and ultimately on 9.6.2005 she was thrown out of her matrimonial home after having been beaten mercilessly and was told not to return without the amount of ₹ 5 lakhs. Subsequently, panchayat was convened at the residence of the respondent in the year 2006, 2007 and in the year 2009 but to no avail and thus the appellant was residing at her parental home since then.

3. The respondent contested the petition and while denying all the material averments made by the appellant, he alleged that though the appellant had become pregnant after some time of the marriage but she aborted the child due to her arrogant behaviour. The respondents stated therein that he had

informed the parents of respondent that his father had disowned him from all his property and he was residing separately due to some family reasons. He further stated that the appellant quarreled with respondent and insulted and humiliated him on account of his unemployment and herself left the company of respondent without his consent or permission and despite his requests to join him back she did not return to her matrimonial home after 2009.

4. The pleadings led to framing of the following issues :

- (1) Whether the petitioner is entitled to a decree of divorce by way of dissolution of her marriage with the respondent on the grounds as mentioned in the petition, as alleged ? OPP
- (2) Whether the present petition is not maintainable in the present form ?OPR
- (3) Relief.

5. The appellant, in order to substantiate her case, herself stepped into witness box as PW-1 and also examined her father Rajender Singh as PW-2, Ex-Sarpanch Sunehra Singh as PW-3 and Mohinder as PW-4. On the other hand, the respondent examined RW-1 Shripal, RW-2 Angrej Singh, RW-4 Jitender and himself stepped into witness box as RW-3.
6. Upon considering the evidence, the learned lower Court came to conclusion that there is no evidence to suggest that the respondent-husband had treated the wife with cruelty at any point of time so as to justify dissolution of marriage and thus returned its findings on issue no.1 against the

appellant/wife. Issue no. 2, having been not pressed, was decided against the respondent/husband. Consequently, the petition filed by wife under Section 13 of Hindu Marriage Act, 1955 seeking dissolution of marriage was dismissed vide impugned judgment dated 22.2.2013. Aggrieved with the same, the wife has filed the present appeal.

7. The learned counsel for appellant, while assailing the impugned judgement, has vehemently argued that the learned lower court did not appreciate the evidence in the correct perspective and reached at an erroneous conclusion that there was no evidence to establish cruelty on part of the respondent.
8. Upon considering the aforesaid submission in context of the evidence on record we find that the appellant categorically stated as PW-1 in tune with her assertions to the effect that the respondent and other members of his family had been ill treating her right from the inception of marriage in order to press upon their demand of dowry, more specifically for an amount of ₹ 5 lakhs and upon her inability to meet the said demand she used to be beaten up and was turned out of her matrimonial home. She has specifically stated regarding convening of panchayats to the residence of respondent but to no avail as the respondent did not rehabilitate her. The statement made by PW-2 Rajinder Singh, father of appellant is also to the same effect.
9. Though the aforesaid PW-2, being father of the appellant, would support the case of his daughter and his statement may be doubted on this score, but the testimony of PW-3 cannot be brushed aside as he being an ex-Sarpanch of the village, would enjoy a certain respectability and because of his status would be the most natural person to be a member of the 'panchayat' convened to sort

out the matrimonial discord. PW-3 has fully supported the case of appellant especially as regards convening of 'panchayats' in the year 2006, 2007 and 2009 to rehabilitate the appellant in her matrimonial home. He specifically stated that he alongwith other residents of the village went to the village of respondent to reason out with respondent so as to rehabilitate appellant in her matrimonial home but every time their efforts failed as the respondent and other members of his family refused to keep the appellant unless an amount of ₹ 5 lakhs was brought as dowry.

10. PW-4 Mohinder corroborated the aforesaid statement while stating that he was member of the 'panchayats' convened by father of the appellant in the year 2006, 2007 and 2009 but the respondent and other members of his family did not rehabilitate the appellant and demanded an amount of ₹ 5 lakhs as dowry. The lengthy cross examination of the said witnesses did not elicit anything helpful to the case of respondent or to doubt their credibility.
11. The assertions of appellant regarding conduct of respondent also stand substantiated from the fact that he had been disowned by his own parents which is admitted by all the witnesses examined by the respondent. The conduct of the respondent is also apparent from the fact that there is nothing on record to show that he himself ever made any sincere effort to bring back his wife to the matrimonial home. None of the witnesses examined by him has stated regarding any effort in the shape of any panchayat having been convened by the respondent to bring back his wife. No petition under section 9 of Hindu Marriage Act, 1955 was filed by the respondent seeking restitution of conjugal rights. Thus, apparently, there is nothing to suggest that he was in

for maintaining harmonious matrimonial relationship with his wife. The lower Court has not fairly appreciated the evidence produced by the appellant-wife. A wife in our Indian society does not casually leave the matrimonial home unless she is maltreated.

12. We further find that even in the High Court the conduct of respondent has not been appreciable. The respondent has been resorting to dilatory tactics inasmuch as it was only with intensive efforts that his presence could be secured. In fact it was with the aid of publication in a newspaper that his service was effected. He was proceeded against ex-parte vide order dated 9.5.2014. Subsequently, the counsel for respondent put in appearance on 21.1.2015. Even thereafter several requests for adjournments were made on behalf of respondent. It is specifically recorded in order dated 19.3.2015 that respondent had requested for adjournment for the third time. Subsequently the matter was also referred to Mediation and Conciliation Centre vide order dated 30.3.2015 but mediation did not yield any result. A perusal of interim orders also shows that the counsel for respondent had been adopting an evasive approach for appearance on behalf of the respondent on various occasions. Subsequently vide order dated 28.9.2017, the respondent was again proceeded against ex-parte. On 16.12.2017 the said ex parte proceedings were set aside subject to payment of ₹ 5000/- costs. However, neither the said costs were paid nor anybody appeared on behalf of the respondent today and consequently he was ordered to be proceeded against ex- parte again.

13. The aforesaid conduct clearly shows that the respondent is not at all interested

in maintaining matrimonial relations with the appellant and he simply wants to delay the proceedings in order to harass the appellant. Such like conduct reaffirms the assertions of the appellant that the respondent had ill-treated her and turned her out of her matrimonial home. The judgment of lower Court is based on misreading of evidence produced by the appellant which is infact sufficient enough to establish the cruel conduct on the part of the respondent.

14. As such, the findings recorded by the learned lower Court on issue no. 1 cannot be sustained and are hereby reversed holding therein that the respondent had been treating the appellant with cruelty during her stay in her matrimonial home. Consequently the appellant is entitled to get her marriage dissolved on ground of cruelty. The impugned judgment cannot be sustained and is hereby set aside. The petition filed by the appellant under section 13 of Hindu Marriage Act is accepted and marriage between the parties is ordered to be dissolved. The appeal stands accepted accordingly.
15. Decree be prepared. Parties to bear their own costs.

(M.M.S.Bedi)
Judge

(Gurvinder Singh Gill)
Judge

January 17, 2018

kamal

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No