

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

(217)

**FAO-M-223-2013 with
CMM-147-2014 & CM-18739-CII-2017
Decided on: March 19, 2018.**

Kavita Sharma

.... Appellant

Versus

Sushil Kumar Sharma

..... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present: Mr. Bhavyadeep Walia, Advocate, for the appellant.

Respondent ex-parte.

M.M.S. BEDI, J (ORAL)

Vide judgment and decree dated 02.04.2013, the lower Court dismissed the petition for divorce filed by the appellant-wife on the ground of cruelty against the respondent-husband and allowed the counter claim of the respondent-husband for restitution of conjugal rights, arriving at a conclusion that the appellant-wife has, without any reason, left the company of the respondent-husband along with two children.

It is worth notice at the outset that the respondent-husband has not paid arrears of maintenance pendente lite awarded @ Rs.5,000/- per month vide order dated 28.01.2016 from the date of application i.e. September, 2014. On account of respondent-husband having not paid the amount, further evasive approach had been adopted by the respondent by opting not to appear before this Court despite service. He had engaged a counsel in the year 2013-14 but thereafter he is not being represented through any counsel.

Without expression of any opinion whether the respondent-husband has avoided representation to avoid the payment of arrears of maintenance pendente lite, it is sufficient to mention that the respondent-

husband was proceeded against ex-parte on 01.02.2018 and the appeal was listed for today for final disposal.

With the assistance of learned counsel for the appellant, we have gone through the record.

On the basis of pleadings, the following issues had been framed by the lower Court:

- “(i) Whether the respondent has treated the petitioner with cruelty? OPP*
- (ii) Whether the respondent has deserted the petitioner without any reasonable cause? OPP*
- (iii) Whether this petition is not maintainable in the present form? OPR*
- (iii-a) Whether the counter claim filed by the respondent is liable to be decreed? OPR*
- (iv) Relief”.*

On issue No.1, the lower Court had given a finding in favour of the respondent and against the appellant-wife holding that the respondent-husband had not treated the appellant-wife with cruelty.

On issue No.2, the lower Court had given a finding in favour of the respondent that he had not deserted the appellant-wife.

On issue No. 3-A, it was held that the respondent is entitled to a decree of restitution of conjugal right as a counter claim.

On the basis of finding on all the issues, petition for divorce filed by the appellant-wife, was dismissed and application in the shape of counter claim for restitution of conjugal right was allowed, vide impugned judgment and decree dated 02.04.2013.

With the assistance of the counsel for the appellant, we have gone through the evidence produced by the appellant-wife to establish her

pleadings that the respondent-husband is a heavy drunkard who used to come late at night in a drunken condition and on raising objections by the appellant, he used to give beatings to her. He wasted the whole of the dowry articles and gold ornaments of Istridhan for the lust of liquor and demanded cash of Rs.1 lac from the parents of the appellant for starting independent business. On account of appellant-wife having refused to illegal demands of the respondent, she was compelled to leave the matrimonial home along with two minor children as the respondent refused to provide meals for two times to the appellant. Before filing the petition, she had been staying with her parents for two and half years at their mercy. In order to substantiate the said pleadings, she had examined herself as well as Roshan Lal who was produced to establish that the respondent suspected the character of the appellant without any reason by levelling false allegations.

The respondent, in his written statement, has taken up the plea that the appellant wanted to marry Roshan Lal after obtaining divorce. In para 5 of the written statement on merits, the respondent has taken up the specific plea to the effect that he was a labourer and the appellant had without any reasonable cause, at the instance of one Laxmi Devi friend of Kavita Devi, grand mother of the appellant, wants to marry with Roshan Lal as the marriage of Roshan Lal with his wife Laxmi Devi has broken down irretrievably and she wants to adjust the appellant as wife of her son Roshan Lal. Said Roshan Lal is 70 years aged person and he appeared in the Court as witness of appellant. The allegation of the respondent clearly indicates the behaviour of the respondent towards the appellant.

After going through the statement of the appellant and Roshan

Lal, we are satisfied that the respondent had treated the appellant in such a cruel manner that she was compelled to leave the company of the respondent along with the minor children. Otherwise, there is no reason for her to leave the matrimonial home along with the children. Generally, an Indian lady from the socio status to which the parties belong, would not normally leave the matrimonial home along with the children unless until she is compelled by the circumstances to do so.

The conduct of the respondent of having deprived the appellant and having not bothered to come forward and pay amount of maintenance is also a corroborative circumstance to establish the allegation of cruelty levelled by the appellant.

In view of said circumstances, the appeal is allowed; judgment and decree of the lower Court are hereby set aside and it is held that the appellant-wife was treated by the respondent-husband with mental and physical cruelty. The petition is allowed. Marriage of the appellant with the respondent is dissolved by decree of divorce on the ground of cruelty.

CMM-147-2014 & CM-18739-CII-2017 are disposed of having rendered infructuous.

(M.M.S. BEDI)
JUDGE

March 19, 2018.
harsha

(GURVINDER SINGH GILL)
JUDGE

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