

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-308-2013 (O&M)

Date of decision: March 09, 2018

Gurmail Kaur

.....*Appellant*

Versus

Gurcharan Singh

.....*Respondent*

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

Present : Mr. Narinder Singh Swaitch, Advocate for the appellant.  
Mr. S.S. Rangi, Advocate for the respondent.

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**GURVINDER SINGH GILL J.**

1. The appellant-wife has filed this appeal challenging judgment and decree dated 17.5.2013 passed by the learned Additional District Judge, Ludhiana vide which a petition filed by respondent-husband under Section 13 of Hindu Marriage Act, 1955 (hereinafter referred to as "*the Act*") has been accepted and a decree of divorce dissolving marriage of the parties has been passed.
2. The case set up by respondent-husband, in his petition under Section 13 of the Act, is that the marriage between the parties was solemnized on 4.12.1990 at Village Haripur, Tehsil Amloh, District Fatehgarh Sahib by performing Anand Karaj ceremony and two daughters were born out of the

wedlock. The respondent-husband asserted that the appellant-wife was a strong headed lady and used to misbehave with him and left the matrimonial home about 10 years back and started residing with her father at village Haripur, Tehsil Amloh, District Fatehgarh Sahib. It is averred that the appellant-wife had filed a petition under Section 13 of the Act seeking divorce on 24.10.1997, wherein a decree for judicial separation was passed on 27.3.1999 and ever since then there has been no cohabitation amongst the parties and there has been no resumption of conjugal rights since the last ten years.

3. The appellant-wife in her reply raised objections as regards maintainability, locus standi etc. and alleged that the respondent-husband had not approached the Court with clean hands and is estopped by his act and conduct to file the petition and had not even paid any maintenance to the appellant-wife. The appellant-wife stated therein that the respondent-husband and other members of his family are greedy persons and had been pressurizing her to bring more dowry from her parents and also to adopt a son of his brother, as the appellant-wife had been blessed with female children only. The appellant-wife further stated therein that the respondent-husband gave beatings to her and had turned her out of matrimonial home in the month of February 1994 and since he refused to maintain her, she alongwith her minor daughters had been living at the mercy of her parents.

4. The parties were put to proof on the following issues:-

1. Whether the petitioner has never resumed any cohabitation with the respondent for the last more than 2

years after passing of decree for judicial separation in between the parties? OPP.

2. Relief.

5. The respondent-husband examined PW-1, Rupinder Singh and himself stepped into witness box as PW-2 apart from leading documentary evidence. The appellant-wife herself stepped into witness box as RW-1 and also examined RW-2, Gurdeep Singh and RW-3, Major Singh.
6. The learned lower Court, upon considering the evidence on record returned its finding on issue No.1 in favour of respondent-husband and consequently while accepting petition under Section 13 of the Act, passed a decree dated 17.5.2013 for dissolution of marriage of the parties. Aggrieved with the aforesaid decree, the appellant-wife filed the present appeal.
7. During the course of pendency of this appeal, an application filed by the appellant-wife under Section 24 of the Act had been accepted and the appellant-wife had been awarded maintenance @ ₹ 1,600/- per month with effect from the date of application i.e. February 2015. Litigation expenses to the tune of ₹ 10,000/- were also awarded to the appellant-wife vide order dated 1.8.2017. However, despite several opportunities having been afforded to the respondent-husband to pay the arrears of maintenance, the same were not paid and consequently the defence of respondent-husband has been struck off vide separate order of even date.
8. We have heard learned counsel for the parties. In the present case, it is the appellant-wife who had initially filed a petition under Section 13 of the Act,

wherein the learned lower Court instead of passing a decree of divorce, passed a decree for judicial separation on 27.3.1999. It is not disputed that the said judgment has since attained finality. Based on the said judgment, the respondent-husband filed a petition under Section 13 of the Act on the ground that ever since passing of decree of judicial separation between the parties, there has been no cohabitation between the parties for more than one year.

9. The respondent-husband, while in the witness box, has stated categorically to the effect that after the decree of judicial separation on 27.3.1999, the appellant-wife has not resumed cohabitation with the respondent-husband and they have been living separately for more than ten years.
10. PW-1 Rupinder Singh has also supported the case of the respondent-husband by stating that the appellant-wife left the matrimonial home in the year 1994 and started living at her parental home and that ever since then the parties have not cohabited with each other. Though the appellant-wife, Gurmail Kaur, herself stepped into witness box as RW-1, wherein she tendered into evidence a detailed affidavit Ex.RA towards examination-in-chief stating therein that the respondent-husband and members of his family had been harassing and maltreating her and demanded more dowry, but she has not stated a word to the effect that there had been any resumption of cohabitation after passing of decree of judicial separation on 27.3.1999. The said decree of judicial separation has admittedly attained finality.
11. Section 13 (1A) (i) of the Act, providing for dissolving of marriage pursuant to a decree of judicial separation, reads as follows:-

“(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for dissolution of the marriage by a decree of divorce on the ground:-

- (i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceedings to which they were parties.”

12. A perusal of the aforesaid provision shows that in case either of the parties is able to show that there has been no cohabitation amongst the parties for one year after passing of decree of judicial separation, the same would constitute a valid ground for dissolution of marriage. Though there is a small error in the issue framed wherein the period of “no cohabitation” is mentioned as 2 years instead of one year but the said error cannot be said to have caused any prejudice in the present case to either of the parties as the period of “no cohabitation”, in the present case, is alleged to be more than 7 years (1999 to 2007) after passing decree of judicial separation which is much more than statutory requirement of one year.

13. In the present case, the decree of judicial separation was passed on 27.3.1999. Though the aforesaid decree was passed pursuant to a petition filed by the appellant-wife under Section 13 of the Act but it is the respondent-husband who, in the year 2007, filed a petition under Section 13 of the Act seeking dissolution of his marriage with the appellant-wife on the ground that there had been no cohabitation amongst the parties after passing of decree of judicial separation on 27.3.1999 upto filing of petition u/s 13 of

the Act in 2007.

14. The appellant-wife even while in the witness box has not disputed the aforesaid position of there being no cohabitation amongst the parties. Even RW-2, Gurdeep Singh and RW-3, Major Singh admitted during their cross-examination that the appellant-wife has been residing permanently with her parents since the last more than 10 years. As such, this Court does not find any reason to differ with findings on issue No.1 as recorded by the learned lower Court to the effect that there has been no cohabitation amongst the parties for more than 7 years after passing of the decree of judicial separation and the same are hereby affirmed.
15. In view of our aforesaid discussion, we do not find any infirmity in the impugned judgment and decree. There is no merit in this appeal and the same is hereby dismissed. However, the said dismissal is without prejudice to the rights of the appellant-wife to seek recovery of arrears of maintenance *pendente-lite* awarded by this Court during pendency of this appeal.
16. Decree sheet be prepared. Parties are left to bear their own costs.

**( M.M.S. Bedi )**  
**Judge**

**( Gurvinder Singh Gill )**  
**Judge**

March 09, 2018  
pankaj

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No