

In the High Court of Punjab and Haryana at Chandigarh.

FAO-4153 of 2016 (O&M)

Date of Decision : 3.5.2018

Manbinder Kaur

.....*Appellant*

Versus

Arvinder Pal Singh

.....*Respondent*

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

Present : Mr. Pankaj Jain, Advocate, for the appellant.
Mr. Mohit Sadana, Advocate, for the respondent.

GURVINDER SINGH GILL J.

1. Appellant-wife has filed this appeal challenging judgment dated 30.5.2016 passed by District Judge (Family Court), SBS Nagar whereby her petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as '*the Act*'), for dissolution of her marriage with respondent, has been partly allowed to the extent that relief of judicial separation in terms of Section 10 of the Act has been granted, while declining the relief of decree of divorce.
2. The case set up by the appellant, as per her petition, is that she was married to respondent on 1.10.2000 at Chandigarh as per Sikh rites and ceremonies and a male child was born out of the wedlock on 3.12.2001, who is residing with the appellant. The appellant averred that though an amount of more than ₹ 15 lacs had been spent on the marriage and sufficient dowry had been given but the respondent and members of his family misbehaved, maltreated, harassed and

tortured her for having brought insufficient dowry. She kept on tolerating the maltreatment and torture with a hope that better sense would prevail upon her husband some day but the maltreatment continued unabated. Subsequently, she started working in a school and later got employed in judicial department at Nawanshahr and she along with her husband and child shifted to Nawanshahr but even at Nawanshahr, the behaviour and conduct of her husband remained the same and he started levelling false and scandalous allegations against her chastity. Subsequently, the respondent left Nawanshahr and went to Sangrur.

3. The respondent contested the petition wherein allegations against the character of appellant were also levelled. The respondent took a stand that in fact the appellant is of quarrelsome nature and she herself deserted the respondent. The parties were put to proof on the following issues :-

1. Whether the respondent has treated the petitioner with cruelty? OPP
2. Whether the present petition is not maintainable? OPR
3. Relief.

4. The appellant, in order to substantiate her case, herself stepped into the witness box as PW-1. She also examined her mother Kamla Devi as PW-2 and her minor son Harshdeep Singh as PW-3. The respondent, in order to rebut the evidence led by the appellant, himself stepped into the witness box as RW1. He also examined Karnail Singh as RW-2, Avtar Singh as RW-3, Pawan Kumar as RW-4 and Hardev Kaur as RW-5.

5. The learned Family Court, upon appraisal of evidence on record returned a

finding that the marriage of the parties has irretrievably broken down and that taking into consideration the conduct of the parties, the wife has fallen just short of establishing 'cruelty' on part of husband so as to entitle her for a decree of divorce. As such, the learned Family Court deemed just and appropriate to pass a decree of judicial separation in terms of Section 10 of the Act instead of passing a decree of divorce.

6. The learned counsel for the appellant has submitted that since the appellant had led sufficient evidence to establish 'cruelty' and in fact the Family Court, while relying upon the said evidence, has passed a decree of judicial separation holding that the marriage has irretrievably broken down, therefore, the appeal may be allowed and a decree of divorce be passed for dissolving marriage of the parties.
7. The parties are present in person. In fact, the husband has also challenged the impugned judgment dated 30.5.2016. The husband made offer to resume cohabitation and alternatively in case the offer is not acceptable to the appellant-wife then to part ways. Since the appellant-wife has categorically stated that she does not wish to resume cohabitation, therefore, the husband has today withdrawn the appeal filed by him i.e. FAO No. 4809 of 2016.
8. We have otherwise also gone through the record of the case with the assistance of the learned counsel for the parties and find that the evidence led by the appellant-wife is sufficient to establish 'cruelty' on part of the respondent so as to justify dissolution of marriage of the parties. The learned Family Court had granted a lesser relief of judicial separation which, in our opinion, needs to be modified.

9. In view of the above stated circumstances and also in view of the fact that cruelty is duly established from the evidence led by the appellant, the appeal merits acceptance and is hereby accepted. The impugned judgment is modified and decree of divorce is ordered to be passed in favour of the appellant dissolving marriage of the parties.
10. Any observation in the judgment regarding cruelty shall have no effect on the rights of the parties in any civil or criminal proceedings pending between them and is meant only for adjudication of the matrimonial rights of the parties which are subject matter of the present appeal.
11. Decree-sheet be drawn. Parties are left to bear their own costs.

(M.M.S.Bedi)
Judge

(Gurvinder Singh Gill)
Judge

3.5.2018
Kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No