

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

F.A.O.-M-14 of 2014 (O&M)

Date of Decision: 01.06.2018

Binderjit Kumari

....Appellant

Vs.

Jaswinder @ Bindu

....Respondent

***CORAM:- HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE HARI PAL VERMA***

Present:- Mr. Munish Gupta, Advocate
for the appellant.

Mr. Sukhmeet Singh, Advocate
for the respondent.

HARI PAL VERMA, J.

The appellant-wife has filed the present appeal against judgment and decree dated 25.10.2013 passed by learned District Judge, SBS Nagar, whereby the petition filed by her under Section 13 of the Hindu Marriage Act (for brevity, “the Act”) seeking dissolution of marriage by way of decree of divorce, was dismissed.

Briefly stated, marriage between the parties was solemnized on 04.05.2001 as per Sikh religious rites and ceremonies and out of this wedlock, two daughters Harmeen Viridi and Kanchan Viridi were born. It

has been averred that till January 2005, there was smooth sailing between

the parties, but thereafter, all of a sudden, the respondent started harassing, beating and torturing the appellant on the ground of insufficient dowry. The respondent had demanded Rs.2 lacs from the appellant in order to enable him to start his own business, to which, the appellant requested the respondent not to insist for such unreasonable demand, as her poor parents cannot afford to pay such a huge amount. Failure to meet this demand made the respondent more aggressive and he started beating the appellant mercilessly while under the influence of liquor. Finally, the appellant was thrown out of the matrimonial house in August, 2008 and since then, she is residing at the house of her parents. The parents of the appellant had convened a panchayat for her rehabilitation, but the respondent refused to keep and rehabilitate her, until his demand of Rs.2,00,000/- is met with. In this manner, the respondent is not only guilty of cruelty, rather he has withdrawn from the society of the appellant with an intent to put an end to the matrimonial ties. Hence, the appellant-wife preferred a petition under Section 13 of the Act for dissolution of her marriage with the respondent.

The respondent-husband contested the petition and filed written statement, taking preliminary objection that the petition is not maintainable in the present form and that the appellant is estopped from filing such petition by her own act and conduct. The allegations levelled in the petition were denied. It was averred that in fact, the appellant did not like the respondent from the very beginning, as the respondent is labourer by profession. The appellant used to leave the matrimonial house on one pretext or the other and the respondent used to bring her back with

the help of his parents and respectables. After marriage, the respondent went to Muscat, where he remained for 1½ years and thereafter, he went to Dubai, where he again remained for 1½ years. He had sent all his earnings from abroad to the appellant and when he asked for the accounts from the appellant, she refused to give the details. The appellant left her matrimonial house in August 2008, when their elder daughter Harmeena was 5 years old and the younger daughter was 3 years old and since then, the appellant never bothered about her daughters. The respondent with the help of his parents has been looking after and maintaining his both the minor daughters. The younger daughter is deaf and dumb. Both are studying in a model school and the respondent has been bearing all the expenses by doing labour. It has been further averred that the respondent has not withdrawn from the company of the appellant, rather, it is the appellant who has left her matrimonial house without any justifiable reasons.

From the pleadings of the parties, the trial Court has framed following issues:-

- “1. Whether the respondent has treated the petitioner with cruelty? *OPP*.
2. Whether the respondent has deserted the petitioner for a continuous period of 2 years without any sufficient cause, before filing of the present petition? *OPP*.
3. *Relief.*”

In support of her petition, the appellant has appeared herself as PW-1 and also got examined her father Bishan Singh as PW-2 and Joginder Pal, Sarpanch of Village Kajala as PW-3. On the other hand, the

respondent has appeared as RW-1. He also examined his father Harbans as RW-2 and Sarpanch of Village Jandiala Inderjit Sidhu as RW-3.

The trial Court after hearing both the sides and appreciating the evidence on record, dismissed the petition, holding that it was the appellant who had left the matrimonial house in August, 2008 after leaving her both the minor daughters. In fact, the dispute between the parties arose when the respondent had come from abroad and asked the appellant-wife to account for the money sent by him from abroad, but the appellant refused to give any details. It was further held that there was no cruelty on the part of the respondent-husband and it was only a normal wear and tear of the matrimonial life.

Aggrieved against the judgment and decree passed by the Court below, the appellant-wife has filed the present appeal.

Learned counsel for the appellant has argued that life between the parties was smooth till January 2005 and it is, thereafter, the respondent started harassing, beating and torturing the appellant on account of insufficient dowry. The appellant had shown the inability of her parents to pay such a huge amount and when they failed to meet the demands raised by the respondent, the appellant was turned out of her matrimonial house in the month of August, 2008. Efforts were made by convening panchayat for rehabilitation of the parties, however, the respondent reiterated his demand of Rs.2 lacs. He had made it clear that unless his demand is met, he would not keep the appellant with him. In this manner, the respondent has withdrawn from the society of the appellant with an intent to put an end to the matrimonial ties. The

judgment passed by the Court below is a result of misreading and misappreciation of evidence brought on record. There is no sufficient evidence on record that from 2005 to 2008 the respondent remained abroad. In fact, during that period, the respondent did not send even a single penny to the appellant and the appellant had passed that period with a great difficulty. Even that period was also the period of desertion. The respondent has failed to adduce any evidence that he has ever sent money to the appellant during the period he remained abroad. The statement of father of the respondent, during cross-examination, indicates that the respondent remained in Muscat for one year and had not gone to Dubai. He was not in a position to send money to India when he was residing in Muscat. In such situation, the statement of the respondent that he had sent money to the appellant during the period he remained abroad, is absolutely incorrect and is not proved. She was turned out of her matrimonial house by the respondent and until 2012, when the present petition under Section 13 of the Act, seeking dissolution of marriage was filed, no steps were taken by the respondent to bring her back. The appellant even made complaint to the Women Cell, but the respondent refused to bring her back to her matrimonial house. The respondent deserted the appellant for a continuous period of 4 years. Had there been any intent on the part of the respondent to bring the appellant back to her matrimonial house, he would have filed a petition under Section 9 of the Act, but no such petition was ever filed. None from the persons who attended the panchayat had ever been examined except Inderjit Singh Sidhu, who has admitted that when the panchayat was called, he was not

the Sarpanch and came to know regarding the matrimonial dispute from the respondent himself.

During the pendency of the present appeal, the appellant had filed an application i.e. CMM-6-2014 under Section 24 of the Act for grant of maintenance *pendente lite* and litigation expenses to the tune of Rs.5,000/- and Rs.20,000/- respectively. This Court, vide order dated 03.11.2014, after paying realistic attention to the attending circumstances of the case, granted Rs.1,000/- per month as maintenance *pendente lite* and Rs.5,000/- as litigation expenses from the date of filing the application and the respondent was directed to make the payment within a period of two months. However, the awarded maintenance was never paid. Rather, the respondent-husband made a statement that he cannot pay the arrears of maintenance. Still, this Court gave a last opportunity to the respondent to pay the arrears of maintenance, failing which, his defence will be struck off. Thereafter, the matter was adjourned to 21.04.2016, 04.05.2016 but the accrued arrear was not paid by the respondent. Therefore, this Court was constrained to strike off the defence of respondent on account of non-payment of maintenance *pendente lite* and litigation expenses. This Court has also made an attempt to bring reconciliation between the parties, but to no avail. In this manner, the respondent has not complied with the order dated 03.11.2014 and subsequent orders passed by this Court as regards payment of maintenance *pendente lite* and litigation expenses.

We may rely upon judgments of this Court in the cases of

Sheela Devi Vs. Gurmukh Singh 2012(8) RCR (Civil) 54, Chameli

Devi Vs. Jagdish Singh 2013(40) RCR (Civil) 311 and *Rani Vs. Parkash Singh 1996(2) PLR 219*, wherein it has been held that in the event of non-payment of maintenance *pendente lite*, the defence can be struck down. Thus, when the respondent has failed to make payment of maintenance *pendente lite* and his defence having been struck off, the allegation made by the appellant regarding cruelty are to be accepted and thus, she is held entitled for a decree of divorce.

Accordingly, the appeal of the appellant-wife is allowed, judgment and decree dated 25.10.2013 passed by learned District Judge, SBS Nagar is set aside and resultantly, the petition filed by the appellant-wife for grant of divorce under Section 13 of the Act is allowed and the marriage between the parties stands dissolved by a decree of divorce.

Decree sheet be drawn.

(M.M.S. BEDI)
JUDGE

(HARI PAL VERMA)
JUDGE

June 01, 2018
AK

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No