

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

(208)

FAO-M-216-2014

Decided on: February 26, 2018.

Kamal

.... Appellant

Versus

Karambir

..... Respondent

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

Present: Mr. Ram Chander, Advocate, for the appellant.

Mr. Bhim Singh, Advocate, for the respondent.

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

Appellant-wife Kamal had filed a petition under Section 13 of the Hindu Marriage Act for dissolution of the marriage against the respondent-husband. The petition for divorce was dismissed vide impugned judgment and decree dated 07.11.2013.

Aggrieved by the said order, the appellant-wife has preferred the present appeal before this Court along with application under Section 24 of the Hindu Marriage Act. Application under Section 24 of the Hindu Marriage Act had been allowed vide order dated 31.10.2017.

The respondent-husband has not paid any amount. Counsel for the respondent and respondent-husband present in person have been given an opportunity to pay the arrears of maintenance pendente lite pursuant to the order dated 31.10.2017, which arrears, as per counsel for the appellant, are more than Rs.1,60,000/-.

Respondent-husband Karambir, present in the Court, has made a statement that he does not want to pay any maintenance pendente lite to the appellant-wife.

In view of above said circumstances, we are of the opinion that appeal being continuation of the original petition, the respondent having refused to pay any maintenance pendente lite, his defence is liable to be struck off throughout.

The appeal has been taken up for consideration on merits.

The claim of the appellant-wife for divorce that she was married to the respondent on 26.04.1999 and that after the marriage they lived together and out of the wedlock a daughter named Sweety was born on 21.04.2002. On 25.04.1999, a day prior to the marriage of the parties, marriage of the brothers of appellant, namely Ram Mehar and Hari Pal was solemnised with two younger sisters of the respondent-husband namely Mahesho and Manju respectively. Parties stayed happily for a period of two years but one Ram Narain had started intervening the married life of the brother of the appellant, Hari Pal and Manju. Said Ram Narain is nephew of the appellant's village as his mother belonged to the appellant's village. Ram Narain started persuading the wife of Hari Pal, namely Manju by visiting her house as he was residing in the same area. The appellant's brother Hari Pal came to know about the bad intention and the evil design of said Ram Narain as he wanted to get hold of the appellant's brother wife namely Manju. On account of above said dispute, Ram Narain and Surat Singh collided with each other and started visiting the house of father-in-law of the appellant in his village at Kurana. They connived with the parents-in-law of the appellant and convinced them that they had committed a mistake by solemnising the marriage of his two daughters in the house of the appellant as the appellant and her family did not hold any respect in the society and in the village. Appellant has also referred to an incident of

11.05.2002 when her father and uncle etc. had visited her on the occasion of birth of the female child namely Sweety. When the appellant's father and above said persons were returning, the appellant insisted them to take her with them as she was given beating and turned out of the matrimonial home by retaining all the jewellery articles of Istridhan. She has been treated with cruelty, physically and mentally and has been deserted after 11.05.2002 without any sufficient cause.

The lower Court dismissed the petition on the ground that it was the conduct of the appellant herself which has forced the respondent to live separately.

The finding of the lower Court is apparently based on presumptions and conjectures.

The stand of the appellant that she has been treated with cruelty on 11.05.2002 and having been thrown out of the house, has not been viewed correctly by the lower Court. Besides this, no reasonable ground has been mentioned in the written statement indicative of any matrimonial wrong on the part of the appellant-wife who had been beaten and thrown out of the house along with the child. Even otherwise, defence of the respondent stands struck off and from the testimony of Phool Singh PW-1 which is supported by the appellant while appearing as PW-2, the grounds of cruelty and desertion stand established. No step seems to have been taken by the respondent for restoring the matrimonial life. False allegation seems to have been raised which would be deemed to have caused mental cruelty to the appellant-wife. The plea of the appellant for cruelty and desertion stands established on the basis of evidence produced and on account of defence of the respondent having been struck off on the basis of

circumstances mentioned herein above.

The appeal is allowed. The impugned judgment and decree of lower Court is set aside. The petition under Section 13 of the Hindu Marriage Act is allowed. Decree of divorce is granted in favour of the appellant-wife, the defence of the respondent having been struck off on account of non-payment of arrears of maintenance pendente lite. Marriage is dissolved by decree of divorce.

Decree sheet be prepared.

(M.M.S. BEDI)
JUDGE

February 26, 2018.
harsha

(GURVINDER SINGH GILL)
JUDGE

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