

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

219

FAO-M-303-2014

DATE OF DECISION: 24.09.2018

ANJU

... Appellant

Versus

RAJINDER KUMAR

... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Raman B. Garg, Advocate with
Ms. Gitanjali Chhabra, Advocate
for the appellant.

Respondent *ex parte*.

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

The respondent-husband has been granted decree of divorce vide impugned judgment and decree dated 28.05.2014 on the ground that the appellant-wife has been living separately from the respondent in order to continue her amorous relation with his first cousin Ajay @ Rinku, which would constitute mental torture.

On notice having been issued to the respondent-husband in the appeal, the respondent-husband had put in appearance and contested the appeal. An application under Section 24 of the Hindu Marriage Act, 1955 filed by the applicant-appellant wife, was allowed on 17.08.2017, requiring the respondent to pay the maintenance pendente lite at the rate of ₹ 4,000/- per month, besides litigation expenses of ₹ 30,000/-. The respondent-husband was given time to pay above said expenses. On 28.11.2017, despite the case having been called twice, nobody had put in appearance on behalf of the respondent. A warning was issued that in case, the arrears of maintenance

pendente lite are not paid on the next date of hearing, the defence would be struck off. On 18.12.2017, counsel for the respondent had put in appearance and expressed inability to pay any amount on the excuse that the appellant is residing with another person.

Before passing any prejudicial order against the respondent, we deemed it appropriate to give a fair opportunity to the respondent to comply the orders of interim maintenance. Counsel for the respondent on 26.03.2018, sought time to clear the arrears of maintenance but on 27.08.2018, neither anyone had put in appearance on behalf of the respondent nor any arrears of maintenance were paid, as a result of which, this Court was compelled to proceed *ex parte* against the respondent, besides striking off his defence in the appeal.

Today, the appeal has been taken up for final arguments. In order to give fair opportunity to the respondent, we have called this case twice. No one has put in appearance on behalf of the respondent. With the assistance of the counsel for the appellant, we have gone through the judgment of the lower court. The respondent-husband had produced witnesses PW-1 Maghar Singh to state that the appellant had left the house of the respondent without intimation and had illicit relations with Ajay @ Rinku. Suraj Bhan PW-2 was produced for deposing the same thing that the appellant used to leave the house of the respondent without information. PW-3 Krishan Kumar stated in the same terms referring the name of Ajay @ Rinku. PW-4 Veeru appeared for the respondent and produced CD containing recorded version between Veeru, Ajay and Anju. The respondent himself appeared as PW-5 and produced his affidavit Ex.PW-5/A, wherein he had levelled similar allegations against the appellant-wife.

The judgment of Additional District Judge, Sirsa indicates that the divorce has been granted on the ground that the appellant-wife has left the house of respondent-husband without his permission and that she is staying with another person. Despite the fact that the defence of the respondent has been struck off in the appeal and he is proceeded against ex parte, in the interest of justice, we have considered the judgment of the lower court.

Since the pleading and the evidence of the respondent contain allegations of adultery and divorce has been sought on the ground, alleging that the conduct of the appellant-wife is mental cruelty to the respondent, we have considered the allegations in the light of Hindu Marriage (Punjab) Rules, 1956, which have been framed under Section 21 of the Hindu Marriage Act, 1955. As per Rule 10 of the Hindu Marriage (Punjab) Rules, 1956, any petition filed on the ground of adultery requires adulterer to be impleaded as party. Rule 10 of the Hindu Marriage (Punjab) Rules, 1956 reproduced as follows:-

“10. Upon a petition presented by a husband for divorce on the ground of adultery, the petitioner shall make the alleged adulterer a co-respondent. The petitioner may, however, be excused from so doing on any of the following grounds with the permission of the Court:-

- (a) That the respondent is leading the life of a prostitute and that the petitioner knows of no particular person with whom the adultery has been committed;
- (b) that the name of the alleged adulterer is unknown to the petitioner although he has made due efforts to discover the same;
- (c) that the alleged adulterer is dead.”

The lower court record indicates that the adulterer has not been impleaded as party as per the requirement of the law. As such, the judgment of the lower court is contrary to the Statute. The allegations of adultery cannot be considered without impleadment of the alleged adulterer. Therefore, the appeal deserves to be allowed. Ordered accordingly.

The judgment and decree dated 28.05.2014 obtained by the respondent-husband, under Section 13 of the Hindu Marriage Act, is hereby set aside. The appeal is allowed, without prejudice to the rights of the appellant to recover any amount due, in accordance with law, as per Section 36 CPC. Parties to bear their own cost. Decree sheet be prepared accordingly.

(M.M.S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

24.09.2018.
SwarnjitS

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