

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-364-2014 with
CMM-158-2015
Date of Decision:-26.3.2018

Geeta

.....Appellant

Versus

Davinder Singh Chahal

....Respondent

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

Present : Mr. Vivek K. Thakur, Advocate for the appellant.

 Mr. Sidharth Sharma, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. The appellant-wife Geeta has filed this appeal challenging judgment and decree dated 3.2.2014 passed by the Court of learned Additional District Judge, Kapurthala, whereby a petition filed by her under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as '*the Act*') seeking dissolution of her marriage with respondent-husband Davinder Singh Chahal has been dismissed.
2. As per case set up by appellant-wife in her petition under Section 13 of the

Act, she was married to respondent-husband on 16.9.2005 at Chandigarh as per Sikh rites and they cohabited together as husband and wife at Kapurthala and two children were born out of the wedlock. It is averred that though it was a love marriage but soon after the marriage, the attitude of respondent-husband and his parents was shocking and they started taunting for having brought less dowry and demanded an amount of ₹ 1.5 lacs to send the respondent abroad. It is averred that the respondent-husband got addicted to vices and started taking intoxicants and used to threaten the appellant-wife to eliminate members of her family and ultimately turned her out of the matrimonial home on 24.12.2007 after giving beatings.

3. The appellant-wife made a complaint to the police and also filed a petition under Section 13 of the Act but the same was subsequently withdrawn upon an assurance given by the respondent-husband. However, since the attitude of the respondent-husband did not change and she was again turned out of the matrimonial home in February 2009, she filed another petition seeking divorce on 22.1.2010. It is averred that since the matrimonial dispute was again resolved, she withdrew the aforesaid petition. It is further averred that the respondent-husband, however, always treated her with cruelty, forcing her to approach the Courts again seeking divorce.
4. The respondent-husband in his reply, while denying all material averments of the petition, raised objection as regards maintainability of the same. The respondent-husband further took a stand that in fact right from the very first day of marriage, the appellant-wife compelled him to reside separately from his parents and used to quarrel on petty matters and though the respondent-

husband started residing separately from his parents but the behaviour of the appellant-wife did not change. The respondent-husband thus prayed for dismissal of the petition. The appellant-wife also filed rejoinder to the written statement denying the stand taken by the respondent-husband while reiterating the averments made in her petition.

5. The parties were put to proof on the following issues:-
 1. Whether the respondent has treated the petitioner with cruelty? OPA
 2. Whether the petition is not maintainable? OPR
 3. Relief.
6. The appellant-wife in order to substantiate her case, herself stepped into witness box as PW-1 and also examined her mother Smt. Raj Rani as PW-2 and PW-3 Babli Rani. The respondent-husband examined his father Tarsem Singh Chahal as RW-1 and Giyan Chand as RW-2, apart from leading documentary evidence.
7. The learned lower Court upon considering the evidence on record returned its finding on issue No.1 against the appellant-wife. Issue No.2 as regards maintainability was, however, decided against the respondent-husband and consequently the petition filed by the appellant-wife seeking divorce was dismissed vide impugned judgment and decree. Aggrieved with the same, the present appeal has been filed by the appellant-wife.
8. We have heard the learned counsel for the parties and have also perused record of the case.

9. It may here be mentioned that during pendency of this appeal, this Court had awarded interim maintenance to the appellant-wife payable by the respondent-husband @ ₹ 5,000/- per month with effect from the date of application i.e. from 29.9.2015 vide order dated 26.4.2017. Since the respondent-husband did not clear the arrears of maintenance running into ₹ 1.20 lacs approximately, the defence of the respondent-husband was struck off by this Court vide order dated 8.9.2017.
10. The learned counsel for the appellant-wife while assailing the impugned judgment submitted that the learned lower Court did not appreciate the evidence in the correct perspective and gave undue weightage to the fact that on earlier occasions, the appellant-wife after filing the divorce petition had withdrawn the same.
11. The learned counsel for the appellant-wife has further submitted that in fact the stand of the appellant-wife as regards the assertion that she was being treated with cruelty by the respondent-husband stands established from the fact that he has not even bothered to pay the meagre interim maintenance *pendente lite* @ ₹ 5,000/- per month for maintaining his wife and two children. The learned counsel has thus prayed for acceptance of this appeal and for setting aside the impugned judgment and for grant of decree of divorce. On the other hand, the learned counsel for the respondent-husband has submitted that the impugned judgment is well reasoned and does not suffer from any infirmity and has prayed for dismissal of the appeal.
12. It is not in dispute that the appellant-wife had earlier filed petitions seeking divorce on two occasions. The first petition was filed around the year 2007

and the second one was filed in the year 2010, both of which were withdrawn subsequently. However, it transpires that the said petitions had been withdrawn pursuant to assurances having been given by the respondent-husband of his good behaviour. This Court cannot lose sight of the fact that there are specific provisions in the Hindu Marriage Act, 1955 which mandate that efforts should be made to bring about reconciliation between the parties. Section 23(2) of the Act reads as under:-

“Section 23(2) in The Hindu Marriage Act, 1955

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:”

13. A perusal of the aforesaid provision shows that the spirit of the Act is to make endeavour to save and preserve the matrimonial relations wherever possible. Thus, if the Court has been able to convince the parties to make an attempt to resolve their issues and the party approaching the Court chooses to withdraw the petition filed by such party, the same cannot be treated to be as an impediment to approach the Courts at a later stage. It is evident that even after withdrawal of the second petition filed by the appellant-wife seeking divorce, she made sincere efforts to reside in her matrimonial home and in fact a child was also born thereafter. However, the fact that she was constrained to file a third petition seeking grant of divorce shows that something was amiss in her matrimonial home constraining her to seek dissolution of her marriage. In our

society no lady would readily think of dissolving her marriage as divorce is still considered a 'stigma' in our society. It is only under compelling circumstances that a lady would take such a step. The fact that the appellant-wife had earlier withdrawn two of her petitions under Section 13 of the Act filed by her shows that she was sincerely interested in continuing with her matrimonial relations. However, since the conduct and behaviour of the respondent-husband did not change, she had to approach the Courts again seeking divorce.

14. It will not be out of place to mention here that the respondent-husband did not even choose to step into the witness box to himself deny the assertions of the appellant-wife as regards cruelty met out to her at the hands of the respondent-husband. The respondent-husband has examined his father Tarsem Singh Chahal as RW-1 and one Giyan Chand as RW-2 to controvert the allegations of cruelty levelled by the appellant-wife. RW-1 Tarsem Singh Chahal while admitting the factum of marriage of his son Davinder Singh with appellant has stated that his son never took any money or jewellery from the appellant and never taunted her for having brought less dowry. He has denied that the appellant was ever given any beatings by the respondent or had been turned out of her matrimonial home. He has stated that in fact the appellant herself left the matrimonial home out of her own accord along with her belongings and that she was in the habit of filing false petitions. RW-2 Giyan Chand has stated that he knows the parties and that the respondent is a peace loving citizen whereas the appellant is arrogant lady and used to pick-up quarrels with the respondent and members of his family. While RW-1, being father of

the respondent, has simply tried to support the case of his son by stating that his son never maltreated the appellant, the other witness i.e. RW-2 Giyan Chand while stating that the appellant was an arrogant lady and used to pick-up quarrels with respondent has not specified any time or date of such quarrels. Their testimony in the absence of testimony of the respondent cannot be said to inspire confidence at all.

15. Ironically the marriage was outcome of a love affair between the parties as has been admitted by RW-2 Gian Chand, but the respondent-husband has chosen not even to pay the meagre maintenance awarded by this Court @ ₹ 5,000/- per month for maintaining his wife and two children, as a result of which the defence of the respondent-husband was struck off. The respondent-husband has virtually left the appellant-wifefor herself in to penury and has least bothered to make some arrangement even for the bare minimum necessities and essentials for his wife. He has intentionally chosen to keep away from the Court and to pay maintenance. Non-payment of maintenance is itself an act of cruelty as has been held in **2013 (15) RCR (Civil) 488 Davinder Singh Vs. Kulwinder Kaur (DB)** which has been followed in **2016(4) PLR 402 Rimpi Vs. Yogender (DB)**. In these circumstances the factum of cruelty on part of the respondent-husband is duly established.

16. In view of our aforesaid discussion especially bearing in mind the conduct of the respondent-husband who is not even willing to maintain his wife despite an order of this Court, we have no hesitation in holding that the respondent-husband has been treating the appellant-wife with cruelty. The findings of the learned lower Court to the contrary cannot sustain and are hereby set aside.

Consequently, on account of reversal of findings on issue No.1 and having held that the respondent-husband has been treating the appellant-wife with cruelty, the appellant-wife is held entitled to grant decree of divorce. The appeal merits acceptance and is hereby accepted. The impugned judgment and decree dated 3.2.2014 are hereby set aside. The petition filed by the appellant-wife under Section 13 of the Act is hereby allowed and the marriage of the parties is hereby dissolved by passing a decree of divorce. The application under Section 24 of the Act is disposed of having rendered infructuous.

17. Decree sheet be prepared. Parties are left to bear their own costs.

(M.M.S. Bedi)
Judge

(Gurvinder Singh Gill)
Judge

26.3.2018
pankaj

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No