

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

**FAO-M-147 OF 2015
DATE OF DECISION : 18.8.2018**

Parminder Singh

...Appellant

Versus

Supinder Kaur

...Respondent

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

Present : Mr. Anil Kumar Garg, Advocate,
for the appellant.

Respondent ex parte.

M. M. S. BEDI, J.

Appellant-husband has filed the present appeal, challenging the judgment and decree dated 13.3.2015 passed by Additional District Judge, Fatehgarh Sahib, whereby his petition filed under Section 13 of the Hindu Marriage Act, 1955, for dissolution of marriage by way of decree of divorce on the grounds of cruelty as well as desertion, was dismissed.

The appellant-husband had filed a petition under Section 13 of the Hindu Marriage Act, for dissolution of marriage on the ground of cruelty and desertion, with the averments that marriage between the parties was solemnized on 17.10.1999. After the marriage, parties lived together as husband and wife and two children, namely Parasdeep Singh and Shagundeep Kaur,

were born out of this wedlock. From the very beginning of their marriage, the respondent-wife had misbehaved and treated the appellant-husband with cruelty. She was in habit of quarreling with the appellant-husband and using filthy language. In the month of December, 2010, the respondent-wife left the matrimonial home along with all valuable articles and did not return back. The appellant-husband visited the house of respondent-wife's parents in the month of January, 2011 and then in March, 2012, in order to bring her back to the matrimonial home, but the respondent-wife refused to join his company.

Upon notice, the respondent-wife did not turn up despite being served and as such, she was proceeded against ex parte vide order dated 14.10.2014.

The appellant in ex parte evidence himself stepped into the witness box as PW-1 and also examined Saminder Singh as PW-2 and Dharam Pal Singh as PW-3.

The Court below dismissed the petition of appellant-husband observing that he failed to prove the allegations of cruelty and desertion.

Aggrieved against the said judgment and decree dated 13.3.2015, the appellant-husband has preferred this appeal.

The appellant-husband had approached the trial Court for divorce primarily on the ground of cruelty and desertion alleging that the wife had maltreated him and had refused to

perform the matrimonial obligations and had created such an atmosphere wherein it was not possible for both the parties to live together. In order to succeed in a petition under Section 13 of the Hindu Marriage Act, on the ground of cruelty, the appellant-husband was required to prove cruelty and desertion.

We have heard learned counsel for the appellant-husband at length and are of the opinion that the allegations of cruelty have not been substantiated. Making vague allegations about misbehaviour are not sufficient for accepting the prayer for divorce on the ground of cruelty. The allegation that the respondent-wife was in habit of using filthy language, has not been substantiated by any evidence. As such, we do not find any ground to grant divorce on the vague and uncertain allegations of cruelty leveled in the pleadings, as well as in the evidence produced by the appellant-husband. However, we are satisfied that the respondent-wife had left the matrimonial home in the second week of December, 2010, i.e for a period of more than two years prior to the filing of divorce petition. The evidence produced on record indicates that till date, the respondent-wife has not reunited despite the fact that both the children are being maintained by the appellant-husband.

Since the respondent-wife has opted not to appear before the lower Court as well as this Court, despite best efforts having been made to serve her through publication and other modes, we are satisfied that the appellant-husband has been able

to establish that she has got no intention to resume cohabitation. The intention to desert is writ large on account of both necessary ingredients of desertion having been established. The appellant is entitled to relief in the present appeal on the ground of desertion. As per the provisions of Section 10 of the Hindu Marriage Act, the grounds for decree of divorce, as well as for judicial separation are same and it is open to a Court to grant decree for judicial separation, instead of grant of decree of divorce.

As the respondent-wife is ex parte, we deem it appropriate to pass a decree of judicial separation on the ground of desertion, in favour of the appellant-husband. The appeal is allowed. The dismissal of petition for divorce on the ground of cruelty is upheld. However, the appellant-husband is granted a decree of judicial separation under Section 10 of the Hindu Marriage Act, for the conduct of the respondent-wife having deserted him for a period of more than two years before the filing of petition. Decree sheet be drawn accordingly.

(M. M. S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

AUGUST 18, 2018
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| 1. | Whether speaking/reasoned : | YES/NO |
| 2. | Whether reportable : | YES/NO |