

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

214

FAO-M-192 of 2015 (O&M)

Date of Decision:- 9.2.2018

Radha Rani

... Appellant

Versus

Kamal Kumar

... Respondent

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

Present:- Vijay Sharma, Advocate, for the appellant.

Mr. Abhimanyu Antil, Advocate, for the respondent.

M.M.S. BEDI, J.

Vide impugned judgment dated 16.4.2015 application under Section 9 of the Hindu Marriage Act filed by the respondent husband for decree of restitution of conjugal rights was allowed. Aggrieved against the said judgment, the wife had preferred this appeal.

With an objective to bring about reconciliation between the parties and to determine the *bonafidies* of the respondent, parties were directed to appear before this Court on 15.11.2017. The respondent had made a statement that he is not ready to resume cohabitation with the appellant-wife at any cost. In order to re-affirm the statement and to give a fair opportunity to the respondent to think over the legal consequences over his statement, the case was adjourned for today.

Today the respondent has come present in the Court and has made a statement in writing that he is not interested to resume cohabitation with the appellant-wife. The affidavit of Kamal Kumar has also been

furnished indicating that he is not willing to resume cohabitation with the appellant- wife. The affidavit is taken on record.

In view of the said statement of the respondent-husband, we are satisfied that the act of the respondent in filing petition under Section 9 of the Hindu Marriage Act was not *bona fide* and the petition was merely an excuse to evade the payment of maintenance by raising a plea that the wife was reluctant to join his company despite decree of restitution of conjugal rights. Intentions of the respondent have been disclosed clearly. It has also been informed that the arrears of maintenance awarded in proceedings under Section 125 Cr.P.C. have also not been paid as a result of which he had to remain in custody.

In view of the said circumstances, we are of the considered opinion that application under Section 9 of the Hindu Marriage Act has been wrongly allowed by the lower Court and it deserves to be dismissed in view of the clear intention disclosed by the respondent-husband. The respondent-husband will not be entitled to take advantage of order dated 16.4.2015 for any purpose in matrimonial litigation. The appeal is allowed and judgment and decree dated 16.4.2015 is hereby set aside.

(M.M.S. BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

February 9, 2018

mohan

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No