

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M- 229 of 2015

Date of Decision: September 5, 2018

SavitaAppellant

Vs.

SonuRespondent

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

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Present: Mr.Saurabh Dalal, Advocate for the appellant.
None for the respondent.

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M.M.S. BEDI, J.

This appeal has been preferred by appellant-wife whose petition under Section 13 of the Hindu Marriage Act, for short 'the Act', for dissolution of marriage with respondent has been dismissed vide judgment and decree dated April 17, 2015. The appellant had sought decree of divorce from the respondent- husband by claiming that she was married to the respondent on June 17, 2009 in Village Rurki Tehsil and District Rohtak. They lived as husband and wife only for one day and the behaviour of the respondent and his family members was not good and it was abnormal. The appellant visited her parents home the next day after the marriage as per the custom but no effort was made by the in-laws of the appellant or the respondent to bring her back. The appellant claimed divorce on the basis of mental cruelty and desertion.

The respondent contested the petition admitting that there has not been any cohabitation after June 18, 2009 when the appellant had gone to her parental home. The father and mother of the appellant had suggested that the appellant was interested to get education of 10+2, JBT, B.A., B.Ed. and sewing course and on account of said reason she did not join her matrimonial home despite having passed 10+2 examination as she wanted to get admission in JBT course and wanted to study B.A., B.Ed.. The parents of the respondent visited the house of the appellant 3/4 times accompanied by the respondent but the parents of the appellant refused to send her along. The appellant stayed in the matrimonial home only for few hours on June 17, 2009/ June 18, 2009 and did not show good social etiquettes.

On the pleadings of the parties following issues were framed:-

- “1. Whether the petitioner is entitled to a decree of divorce by way of dissolution of her marriage with the respondent on the grounds as mentioned in the petition as alleged? OPP.
2. Whether the present petition is not maintainable? OPR.
3. Relief.”

On appreciation of evidence produced by both the parties, the lower Court considered both the grounds of cruelty and desertion and held that the allegations of cruelty do not stand established on the record. So far as the desertion is concerned, the lower Court observed that the respondent had tried to bring back the appellant with the intervention of Panchayat but her parents refused to send her back as such on account of conduct of the appellant she was not entitled to get divorce on the ground of desertion.

It is pertinent to mention that respondent was directed to pay a sum of Rs.15000/-as litigation expenses and Rs.2000/- per visit to the

appellant vide order dated September 15, 2015 when the matter was referred to Mediation and Conciliation Centre of Punjab and Haryana High Court. The respondent failed to pay the said amount and the defence of the respondent in the appeal was struck-off vide order dated August 9, 2016. Thereafter the respondent was not represented by anyone on September 18, 2017 and March 6, 2018 as such we had no option except to proceed ex-parte against the respondent today and take up the appeal for final disposal.

With the assistance of counsel for the appellant, we have carefully gone through the evidence produced by the appellant before the lower Court to establish the allegations of cruelty and desertion. It is an admitted fact that the appellant had stayed with the respondent only for one day and she has not been able to establish as to how within one day she was maltreated but the fact remain that till the filing of the divorce petition i.e. September 15, 2012 i.e. after 3 years, no actual overt act has been attributed to the respondent as such we are of the considered opinion that the allegations of cruelty are not established despite the fact that the respondent is proceeded ex-parte and his defence has been struck off.

We have taken into consideration the ground of desertion. It is an admitted fact that after June 18, 2009, the appellant had been residing with her parents. The appellant filed the petition for divorce on September 15, 2012. The lower Court has held that the respondent has been able to establish that he did not have any intention to bring cohabitation permanently to an end. The lower Court has observed that attempt had been made by respondent to bring back the appellant and that the parents of the appellant had refused to send her back. It will be pertinent to observe that

the lower Court was persuaded by the admission of appellant in her cross-examination while appearing as PW1 that her parents had never gone to the house of the respondent. Merely because she had made this admission in the cross-examination is not sufficient enough to establish that the respondent had no intention to desert the appellant.

We have carefully gone through the statement of PW1, appellant and her affidavit Ex.PW1/A as well as her cross-examination and have also gone through the statement of her mother Pushpa who tendered her affidavit as Ex.PW2/A. The testimony of both the witnesses clearly indicate that no attempt had been made by the respondent to get the appellant back to the matrimonial home. It is not solely the duty of the family members of the wife to take effective steps to enable the separated spouses to re-unite but it is the mutual obligation of both the families to make best efforts so that parties may resume cohabitation. The witnesses PW1 and PW2 were not suggested any specific dates when any attempt had been made by the respondent or the other family members to insist upon the appellant to come back to the matrimonial home. The intention of the respondent to desert the appellant is writ large from the mere fact that during a long period of 3 years no active steps have been taken to take the appellant back.

In view of the said circumstances, we are of the opinion that the respondent has actually deserted the appellant and not taken any effective steps to resume cohabitation by performing his part of the obligation. The mother of the appellant has deposed in her affidavit that the respondent never came to bring back the appellant whereas the best efforts to reconcile

the matter has been made by her and other family members. She stated that the respondent had deserted the appellant for a period of more than 4 years. The appellant was suggested in cross-examination that the respondent had made efforts to settle the dispute with the intervention of Banwari and others but none of these persons were produced to establish the factum of any attempt having been made by the respondent to take the appellant back.

In view of the above circumstances, the factum of desertion for more than 2 years prior to the filing of the petition and intention stands established. The marriage of the appellant deserves to be dissolved on the ground of respondent having deserted the appellant.

The appeal is partly allowed. The judgment of the lower Court regarding desertion is hereby set aside, however, it is affirmed so far as the findings on cruelty are concerned. As a sum total of finding of this Court, the marriage of the appellant is ordered to be dissolved by a decree of divorce on the ground of desertion. Let decree sheet be prepared.

It will be open to the appellant wife to recover any amount due towards litigation expenses etc. by filing execution application, separately.

(M.M.S. BEDI)
JUDGE

September 5, 2018
sanjay

(ANUPINDER SINGH GREWAL)
JUDGE

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