

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

FAO-M-271 of 2015 (O & M)

Date of Decision: 27.11.2018

Avinash Kaur

.Appellant

Vs.

Manjeet Singh

. Respondent

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL**

Present: - Mr. B.S. Jolly, Advocate for the appellant.

Ms. Savita Saxena, Advocate for the respondent.

ANUPINDER SINGH GREWAL, J.

In this appeal, the appellant-wife has challenged the order dated 20.03.2015 whereby her petition for judicial separation under Section 10 of the Hindu Marriage Act, 1955 ('Act' - for short) has been dismissed.

It was the case of the appellant that her marriage with respondent was solemnized at Kharar on 01.11.2009. A female child Eknor was born on 19.02.2012. The respondent was stated to be earning about ₹20,000/- per month being a professional photographer and a computer hardware engineer having ancestral property and his family was financially sound. However, soon after their marriage, the respondent and his family members started ill-treating the appellant and she was meted out with cruel treatment. The father-in-law was always inimical towards the

appellant and he had even disowned the appellant and the respondent. The family of the appellant had been pressurizing her to give birth to a son but when she had conceived, she was not given due care and due to negligence and carelessness of her in-laws, had to undergo an abortion. She had conceived again and gave birth to a baby girl due to which respondent and his family members had been torturing her mentally. After delivery, she was not given proper diet and had to bear the responsibility of bringing up her daughter on her own and the respondent did not even provide her financial support or fulfill the responsibility of a father. The appellant was forced to take up a job and would leave her daughter in a creche and bear all the expenses. The respondent and his family members kept on using abusive language against her and even in her absence, her personal articles were searched by them. The respondent was a habitual drunkard and under the influence of liquor would torture her physically. Her ornaments and jewellery were taken away by the respondent and his family members. She had filed a criminal complaint on 06.09.2014 and, therefore, as she was unable to bear the agony of torture inflicted upon her, she filed a petition for judicial separation.

The respondent-husband in his reply has submitted that the appellant had a degree of M.Sc. (I.T.) and knowingly married with the respondent, who was younger to her and an undergraduate. She had stayed in her matrimonial home for five years and left the same on 22.09.2014 in a planned manner after she filed the petition for judicial separation on 15.09.2014. The allegations of demand for dowry were denied and it was also stated that the appellant is of a stubborn nature and never allowed the respondent and his family members to take care of the child, who was left in

the creche on her own accord. She did not pay due respect to his relatives who visited his house and has herself taken away '*Stridhan*' before leaving the matrimonial home on 22.09.2014.

The trial Court framed the followed issues:-

1. Whether conduct of the respondent amounts to cruelty as per provisions of Hindu Marriage Act?
OPP
2. Whether petitioner is entitled to judicial separation under Hindu Marriage Act on the ground of cruelty? OPP
3. Whether petition is not maintainable? OPR
4. Relief.

The appellant in support of her pleadings tendered in evidence, copy of an affidavit whereby her father-in-law had disowned her and the respondent (Ex.P-1); copy of medical record dated 16.01.2010 and 28.01.2010 (Ex.P-2); receipt of payment of creche (Ex.P-3) and copy of the complaint filed by the appellant before the SSP, Mohali (Ex.P-4) and thereafter closed her evidence.

The respondent did not lead any evidence.

Learned counsel for the appellant has contended that the appellant had been treated in a cruel manner. The trial Court had erred in rejecting her petition for judicial separation.

Per contra, learned counsel for the respondent has contended that the appellant could not substantiate her pleadings with any cogent evidence and, therefore, the trial Court had rejected the petition.

We have heard learned counsel for both the parties and

examined the evidence on record.

The appellant has merely relied upon the documents which she had furnished before the trial Court. She herself did not step into the witness box in support of her pleadings. No witness was examined by her.

Ex.P-1 is an affidavit wherein her father-in-law, namely, Mahender Singh had disowned the appellant and respondent. He has stated in this affidavit that his son (respondent) and daughter-in-law (appellant) are no longer under his control, compelled to disown them from his movable and immovable property, any person who would be dealing with them would be doing so at his own risk and the deponent shall not be responsible for any of their actions. Merely because her father-in-law had disowned the appellant and respondent-husband would not by itself constitute any cruelty to the appellant. It may go on to show that the father-in-law was not happy with the behaviour of the appellant and respondent-husband collectively. There is nothing in the affidavit which would be adverse to the conduct and behaviour of the appellant alone to constitute cruelty.

Ex.P-2 is medical record which only indicates that the appellant had undergone abortion which by itself without any corroborating evidence, cannot be said to be on account of cruel behaviour of the respondent.

Ex.P-3 is a receipt by the creche owner regarding payment to creche for their daughter Eknoor. The use of creche now a days is fairly common and has been provided to ensure that the children of working mothers are well looked after in their absence. The children are even provided learning facilities in the creche and, therefore, only because the child was being kept in the creche during the working hours of the appellant

laws. It could well be possible even if the in-laws are ready and willing to look after the child, the working mother may still prefer the child to be in a creche during her working hours.

Furthermore, Ex.P-4 is a copy of the complaint filed by the appellant against the respondent and his family members which again is unsupported by any corroborative evidence of cruelty. She has not examined any witness in support of her averments which cannot be said to prove that she had been treated with cruelty entitling her to a decree of judicial separation.

Consequently, we do not find any merit in the appeal and the same stands dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

27.11.2018
A.Kaundal

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No