

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-470-2015
Date of Decision: 10.12.2018

Sudesh

. Appellant

Vs.

Roshan Lal

. Respondent

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

Present: - Ms.Neha Jain, Advocate,
for the appellant.

None for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal has arisen from the judgment and decree dated 20.10.2015 by which a petition filed under Section 13 of the Hindu Marriage Act, 1955 [for short 'the Act'] filed by the appellant-wife for seeking a decree of divorce from the respondent-husband on the ground of cruelty was dismissed.

After notice in the appeal, the respondent had put in appearance and in order to explore the possibility of a compromise the parties were relegated to the Mediation and Conciliation Centre of this Court but unfortunately they could not reconcile and the mediation has failed. The appellant-wife had also filed an application bearing CMM-196-2015 under Section 24 of the Act for seeking maintenance *pendente lite* and litigation expenses. The said application was allowed on 2.2.2018 awarding ₹3,000/- per month towards maintenance *pendente lite* from the date of application and litigation expenses to the tune of ₹20,000/-. It was made clear therein that since the respondent-husband had already paid ₹10,000/- towards

interim litigation expenses, therefore, he would pay ₹10,000/- as litigation expenses. The case thereafter was adjourned many times for the purpose of compliance of the order dated 02.02.2018 and ultimately on 9.08.2018, the following order was passed by this Court: -

“No one has put in appearance on behalf of the respondent, despite direction dated 05.02.2018 that in case the interim litigation expenses besides arrears of maintenance pendent elite are not paid, the defence of the respondent will be struck off.

Case called twice. None has appearance on behalf of the respondent. Therefore, he is proceeded against ex parte.

For ex parte arguments, adjourned to 25.09.2018.”

Today also no one has put in appearance on behalf of the respondent. It appears that the respondent-husband is not interested in contesting this petition.

Learned counsel for the appellant-wife has thus prayed that the appeal may be allowed as the respondent-husband has failed to pay the interim litigation expenses which also construe an act of cruelty against the appellant-wife. In this regard, she has relied upon three judgments rendered by this Court in the cases of **“Beant Kaur Vs. Gurwinder Singh”** 2017(1) RCR (Civil) 223, **“Smt. Priyanka Vs. Jai Bhagwan”** 2013(26) RCR (Civil) 918 and **“Rani @ Raj Kaur Vs. Balwinder Singh @ Gora”** 2014(30) RCR (Civil) 22.

It is submitted that though the respondent-husband had initially contested the petition filed under Section 13 of the Act before the Court below but his evidence was struck off before the trial Court also on account of non-payment of maintenance *pendente lite*, however, the trial Court had erred in dismissing the petition filed by the appellant-wife on the ground that she could not prove her case that she had been subjected to cruelty by the respondent-husband.

Learned counsel for the appellant-wife has submitted that the respondent-husband has repeated the same thing before this Court by not appearing to pay the amount of maintenance *pendente lite* and litigation expenses awarded by this Court vide order dated 02.02.2018 and despite granting various opportunities had stopped appearing in this case so that the appeal may also be dismissed in the same way in which the petition filed under Section 13 of the Act was dismissed by the trial Court.

We have heard learned counsel for the appellant and after examining the available record, are of the considered opinion that there is merit in the submissions made by counsel for the appellant because in the case of ***Beant Kaur (Supra)***, having the similar facts, this Court has held that non-payment of maintenance *pendente lite* would construe cruelty against the wife and that would be a sufficient ground for the purpose of allowing the appeal. Similar views have been expressed by this Court in the cases of ***Smt. Priyanka (Supra)*** and ***Rani @ Raj Kaur (Supra)***.

Thus, in view thereof, in the absence of any representation from the respondent-husband, we are also following the dicta of this Court held in the aforesaid cases and allow the present appeal for the purpose of grant of decree of divorce by setting aside the impugned judgment and decree dated 20.10.2015. The petition filed under Section 13 of the Act is hereby allowed

and the marriage of the appellant-wife with the respondent-husband, solemnized on 4.5.2003, is hereby dissolved by way of decree of divorce. The decree-sheet be prepared accordingly.

(RAKESH KUMAR JAIN)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

10.12.2018
Vivek

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*