

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-367-2016 (O&M)

Reserved on 22.3.2018

Date of decision: 05.04.2018

Amritpal Singh Shergill

.....Appellant

Versus

Parminder Kaur Johal @ Parminder Kaur Shergill

.....Respondent

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

Present : Mr. Ramesh Sharma, Advocate for the appellant.

Mr. Surinder Sharma, Advocate for the respondent.

Gurvinder Singh Gill J.

1. The appellant-husband has filed this appeal challenging judgment and decree dated 26.8.2016 passed by the Court of learned Additional District Judge, Jalandhar, whereby a petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as "*the Act*"), for dissolution of his marriage with respondent-wife, has been dismissed.
2. As per case set up by the appellant-husband in his petition under Section 13 of the Act, the marriage of the parties was solemnized as per Sikh rites on

31.10.2012 at Jalandhar and they started residing together as husband and wife at Village Chak Vendal, District Jalandhar but no child was born out of the wedlock. It is averred that before marriage it had been made clear to the respondent-wife that she has to live in India but soon after marriage she started insisting upon the appellant-husband to shift to Jalandhar, to which the appellant-husband did not agree. The marriage was registered in the office of Sub Registrar, Nakodar on 22.11.2012 and thereafter the respondent-wife went back to England on 27.11.2012 never to return back again. The appellant-husband, thus, asserted that the respondent-wife has deserted him continuously for a period of more than two years with effect from 27.11.2012 and thus prayed for dissolution of his marriage by passing a decree of divorce.

3. The respondent-wife, in her reply, while admitting the factum of marriage, asserted that she resided with the appellant-husband at Village Chak Vendal, District Jalandhar from the day of marriage up to 19.1.2013. She has further asserted that immediately on the next day after marriage, the appellant-husband misbehaved with her in the presence of his mother on the issue of money, which had been given to the respondent-wife by guests as '*Shagun*' and the appellant and his mother forcibly took away the '*Shagun*' amount alongwith foreign currency amounting to 200 U.K. pounds from her. She has further asserted that she was maltreated by the appellant-husband and other members of his family over various issues including pressurising her for termination of her pregnancy. The respondent-wife has taken a stand that after she returned back to England on 19.1.2013, she remained in touch with the appellant-husband with a hope to win his love and affection and even sent amounts of 400 Pounds, 200 Pounds and 100 Pounds to him through Western

Union and also sent documents for his sponsorship as a spouse but the appellant-husband refused to file documents for obtaining visa so as to join the respondent-wife. It is further averred that on their second marriage anniversary, the appellant-husband informed her telephonically that he is going to solemnize marriage with his girlfriend in July 2014 and thereafter the respondent-wife came to India on 18.12.2014 to meet the appellant-husband and she managed to speak to him on 24.12.2014 and after speaking to him for a few hours he ran off and stayed away from matrimonial home till her departure from India on 30.12.2014. While denying all other material averments of the petition, the respondent-wife prayed for dismissal of the petition.

4. The parties were put to proof on the following issues:-
 1. Whether respondent has willfully deserted the petitioner from 27.11.2012 and is living separate? OPP
 2. Whether petition is not maintainable? OPD
 3. Whether no cause of action accrued to the petitioner? OPD
 4. Relief.
5. The appellant-husband himself stepped into witness box as PW-1 and produced his marriage certificate as Ex.P-1. He also examined PW-2 Jaswinder Singh, Sarpanch in support of his case. The respondent-wife, on the other hand, herself stepped into witness box as RW-1 and placed on record certain receipts of Western Union as Mark-A to Mark-J.
6. The learned lower Court upon considering the evidence on record returned its finding on issue No.1 against the appellant-husband holding

therein that it is the appellant-husband himself who had deserted the respondent-wife without any reasonable cause and that the respondent-wife cannot be said to have deserted the appellant-husband. Issues No.2 and 3 were also decided against the appellant-husband and consequently the petition for divorce was dismissed vide judgment and decree dated 26.8.2016, which has been challenged by the appellant-husband by way of filing the present appeal.

7. The learned counsel for the appellant-husband has submitted that from the testimony of the appellant-husband, which finds ample support from the statement of PW-2 Jaswinder Singh, Sarpanch, it stands proved that it is respondent-wife who had left the company of the appellant-husband on 27.11.2012 when she returned back to England never to return back again. The learned counsel has submitted that the stand taken by the respondent-wife in her reply that she had been willing to remain in the company of the appellant-husband and had even done her best to take him to England does not stand substantiated from her bald testimony and that it is evident that it is the respondent-wife who had intentionally chosen to keep away from the appellant-husband without any justifiable cause or reason and having done so for a period of more than two years prior to filing of the petition for divorce by the appellant-husband, sufficient grounds had been made out for dissolving of marriage on grounds of desertion. It has thus been contended that the findings as recorded by the learned lower Court can not sustain and are liable to the reversed.

8. On the other hand, the learned counsel for the respondent-wife has

submitted that the learned lower Court has duly appreciated the evidence brought on record by the parties and there is no misreading of the same so as to justify reversal of any of the findings. The learned counsel for the respondent-wife has thus prayed for dismissal of the appeal.

9. We have considered the rival submissions addressed before this Court. It is not disputed that the marriage of the parties was solemnized on 31.10.2012. While the appellant-husband asserts that despite having agreed to reside in India after marriage, the respondent-wife returned back to England on 27.11.2012 never to return back, the respondent-wife on the other hand, has stated that it was on 19.1.2013 that she left for England and that even during her stay in India in her matrimonial house she was ill-treated by the appellant-husband and his mother. It may here be mentioned that the present petition was filed on 4.12.2014 and in case the date of returning back of the respondent-wife to England is taken to be 27.11.2012 as asserted by the appellant-husband, the period of alleged desertion would be more than two years prior to filing of petition and in case the date of return is taken to be 19.1.2013 as claimed by the respondent-wife, the period of alleged desertion would be short of two years. Though oral evidence in this regard has been led by both the parties but no documentary evidence is forthcoming from either of the parties.

10. However, there are certain facts, which indicate that the marriage apparently had been contracted to facilitate migration of the appellant-husband to England. After the marriage was solemnized on 31.10.2012, the same was registered in the office of Sub Registrar, Nakodar on

22.11.2012 and it was shortly after registration of marriage that the respondent-wife returned back to England. Though the appellant-husband has asserted that it had been made clear to the respondent-wife before marriage that she would stay in India after marriage but the said assertion seems highly improbable as a girl born and brought up in England is unlikely to accept and agree to live in rural areas of India unless there is some special attraction or reason justifying such a decision. In fact, the appellant-husband during his cross-examination admitted that at the time of his marriage he was aged 28 years, whereas the age of his wife was 36 years. He further stated that while he had studied up to Class-10th, his wife was much more educated than him. He further admitted that at the time of marriage he knew that his wife had been born in England. He further categorically admitted that pursuant to marriage he was to go to England. He further admitted that there had been physical relations between him and his wife but he did not know as to whether she had become pregnant. He has also admitted that on one occasion, the respondent-wife had sent an amount of 200 Pounds to him. He has further admitted that the documents sent by the respondent-wife to him for going abroad were returned back to her by him. He has further admitted it to be correct that the respondent-wife is still willing to take him to England and to live with him.

11. From the facts, which have surfaced from the cross-examination of the appellant-husband, it is evident that the appellant-husband had contracted marriage with the respondent-wife with an understanding that he would go abroad. The appellant-husband chose to contract marriage

despite the fact that the respondent-wife was much older than him. After the marriage had been solemnized, the respondent-wife, who is born and bred in England, had taken steps to do the needful for taking the appellant abroad. She had admittedly sent some money also to the appellant-husband. She had also sent documents for his visa to England being spouse of the respondent-wife. The stand of the respondent-wife that there had been an understanding that his wife would stay in the village after marriage and that despite the said understanding she had chosen to return to England does not sound probable at all in view of the aforesaid factual position. It rather transpires that it is the appellant-husband who has changed his decision to go abroad after having stayed with his wife for about a month. Though the appellant-husband asserts that his wife had left his company but the conduct on his part does not show that he had ever taken any step to bring her back or had filed any petition for restitution of conjugal rights.

12. On the other hand, the conduct of the respondent-wife shows that she has always been keen to reside with the appellant-husband and was keen to take him to England but the appellant-husband appears to have backed out of his decision for the same. So much so, the appellant-husband during his cross-examination has admitted that his wife is still willing to take him to England.

13. In view of the aforesaid position, we do not find any reason to differ with the findings of the learned lower Court to the effect that it is the appellant-husband himself who has chosen to keep away from his wife, whereas the respondent-wife has always been keen to take the appellant-

husband with her to England and to reside with him. Consequently the findings as recorded by the learned lower Court are hereby affirmed. There is no merit in this appeal and the same is hereby dismissed.

14. Parties are left to bear their own costs. Decree-sheet be prepared.

(M.M.S.Bedi)
Judge

(Gurvinder Singh Gill)
Judge

05.04.2018
pankaj

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No