

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-M-449 of 2016 with
CMM-186-2016 and
CM-5045-CII-2018

Date of Decision:- 09.03.2018

Nitika Gupta

... Appellant

Versus

Karan Gupta

... Respondent

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

Present:- Mr. M.K.Garg, Advocate for the appellant.

Respondent ex parte.

M.M.S. BEDI, J.

This is wife's appeal against the judgment and decree passed by Additional District Judge, Jalandhar (NRI Court) dated 15.10.2016 dismissing the petition for divorce filed by the appellant-wife.

As per the averments in the petition filed under Section 13 of the Hindu Marriage Act, it is pleaded that marriage between the parties was solemnized on 27.11.2013 at Hotel Radisson, Jalandhar. Both the parties lived together at Jalandhar as well as in Australia. A child namely Bhavyam Gupta was born to the appellant on 12.12.2015 at Jammu.

The divorce had been sought on the ground of cruelty alleging

that there had been demand in the second week of October, 2013 before the marriage for FDR of ₹5,00,000/- in the name of the appellant for the respondent. The FDR of ₹4,00,000/- in her name was allegedly given on 18.10.2013 along with gold jewellery to the mother and sister of the respondent. Number of instances of exchange of gifts on different occasions has been mentioned in the petition. As per the averments in the petition, the appellant had gone to Australia on 28.4.2015. The behaviour of the respondent was allegedly not good. He got booked a return ticket from Australia to Delhi in the first week of June, 2015. On second week of May, 2015 she came to know about her pregnancy but she was not provided with appropriate food and medicines. The respondent-husband persuaded her to leave for India in first week of June, 2015. A request was made by the appellant that her Visa should be extended but the respondent instead of agreeing to the same physically assaulted her. He was reluctant to keep her with him. On 9.8.2015 she reached Jalandhar and stayed till 21.8.2015. She was mentally tortured by the family of the respondent. She was called a thief and was threatened to leave the house. A male child was born to her in Jammu on 12.12.2015. All the expenses were borne by her parents.

The respondent was served before the lower Court by registered post but he opted not to appear as such he was proceeded against ex parte.

The appellant, in order to establish the plea of cruelty i.e. repeated demands of dowry and cruelty, herself appeared as PW-1 and tendered her evidence in the shape of affidavit Ex.PW-1/A mentioning therein the details of the dowry articles given and the act of respondent and his family members in torturing her by raising demands of money and articles like split AC and FDR amounts. Her statement was supported by

the statement of PW-2 Sanjeev Goel, father of the appellant, who supported the allegations of cruelty i.e. demand of dowry and maltreatment by producing his affidavit Ex.PW-2/A. The uncle of appellant namely Bharat Bhushan Aggarwal also appeared as PW-3. He has corroborated the testimonies of PW-1 and PW-2 regarding the maltreatment of respondent and his family members. The marriage between the parties was established from marriage certificate Ex.P-5.

The lower Court considered the evidence led by the appellant but a finding has been given on the basis of the facts proved on record that the appellant used to visit her parental house frequently, as such she herself was unable to adjust in her in-laws house whereas the respondent throughout had cooperated the appellant on each and every step. The lower Court did not agree with the plea of cruelty raised by the appellant on the ground that the respondent-husband had arranged tourist Visa for 3 months for the petitioner and took her to Australia in the month of April, 2015. This fact has been considered to be cooperation by the respondent without taking into consideration the fact that on expiry of visitor Visa, she had to return back. Without there being any evidence that respondent *bona fide* wanted appellant to join him, the Court has given a presumptive finding that the appellant herself was not able to adjust with the respondent or that the respondent had been cooperative with her. When there are specific un rebutted allegations produced on record that there are repeated demands of dowry articles and money and she was sent back despite being on family way and no attempt having been made by the respondent to resume cohabitation by taking any steps, the appellant should have been granted the decree of divorce. The act of cruelty of the respondent is writ large on the

record.

The respondent has preferred not to appear before this Court despite registered notice having been sent to him by this Court. Besides this, we are of the considered opinion that unless until tortured physically and mentally a married Indian women will not opt to seek divorce especially when she has got a liability to look after a child born out of the wedlock. The said factor has not been taken into consideration by the lower Court vide order dated 15.10.2016 while considering the ex parte evidence of the appellant.

In view of above discussion, the appeal succeeds and is accordingly allowed with costs. The impugned judgment and decree dated 15.10.2016 are set at naught. The original petition for divorce filed by the appellant is allowed ex parte. Marriage of the parties is dissolved by a decree of divorce on the ground of cruelty. Decree sheet be drawn accordingly.

The appellant has also filed an application under Section 25 of the Hindu Marriage Act for grant of ₹ 1 crore as permanent alimony and a sum of ₹ 50 lacs to Bhavyam Gupta son of the appellant. It is averred that she has got no independent income and the respondent is working in Australia for the last 12 years and owns property both movable and immovable. The respondent is an Geophysist in Terrex Sesimic and working there and drawing salary of 10,000 Australian Dollars per month which comes to around ₹5,00,000/- per month in Indian currency. Besides that, the respondent owned a restaurant in Macay near Bendiog.

Without entering into the details of the income of the respondent, we are of the opinion that he being a resident of Australia for

the last 12 years can be presumed to be earning a sufficiently handsome income. He cannot evade his liability to maintain the minor child born out of the wedlock and ignore the statutory right of the appellant-wife to be maintained. The said right still exists as per Section 25 of the Hindu Marriage Act. The application under Section 25 of the Hindu Marriage Act is allowed and it is ordered that the applicant-appellant will be entitled to a lump sum alimony of ₹30,00,000/-. In case the said amount is recovered, it will be deposited in FDR account of the minor son to the extent of ₹20,00,000/- and the appellant-wife will be entitled to a sum of ₹10,00,000/- till she is unmarried. The amount can be executed in accordance with law.

The application for maintenance pendente lite is disposed of having rendered infructuous.

(M.M.S. BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

March 09, 2018
mohan

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No