

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M 51 of 2016

Date of Decision: September 13, 2018

Neha GuptaAppellant
Vs.

Shiv KumarRespondent

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

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Present: Ms. Paramjit Kaur Deol, Advocate for the appellant.
Mr. Rajinder Goyal, Advocate for the respondent.

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M.M.S. BEDI, J.

This appeal has been preferred by appellant Neha Gupta wife of respondent Shiv Kumar against the judgment and decree dated January 13, 2016 allowing the divorce petition of the respondent on the ground of desertion and cruelty accepting the plea of respondent that on January 9, 2011 the appellant had gone to an educational institute for interview for permanent job leaving her few months old daughter and having not returned back to the matrimonial home. The plea of the appellant sought to be established by her evidence that she was not permitted to enter the house on her return from the interview, was rejected holding that she had not produced any evidence to establish her plea as she neither raised any hue and cry nor called any police official for help to impress upon the respondent and his family members to open the doors of the matrimonial home.

Briefly stated the case of the respondent- husband as pleaded in his petition for divorce is that he was married to the appellant on September

29, 2009. Parties resided together at Kaithal. After marriage, a daughter named Divya was born out of the wedlock on August 15, 2010. The behaviour of the appellant from the very beginning was harsh and arrogant and she used to pick up quarrels with the respondent and his family members on trivial matters and that she used to insult them even in the presence of friends and relatives while refusing to serve water or tea. The appellant left the matrimonial home on January 9, 2011 for interview for permanent job in Technological Education and Research Integrated Institute (TERII) by leaving her 5 months old daughter with the respondent and did not return. Appellant was searched till late night but it transpired that she was in her parental home in Kurukshetra. The appellant had been residing with her parents since January 9, 2011 till the date of filing of the petition on June 15, 2012. It is averred in the petition that the respondent had gone to the house of his in-laws in Kurukshetra to bring the appellant wife on January 10, 2011 but she flatly refused to accompany him. The respondent requested his in-laws but the appellant failed to join his company. It was pleaded that on January 29, 2011, the respondent along with his father and Pawan Kumar Sharma had visited the house of the parents of the appellant to resolve the matter but the appellant refused to join the company of the respondent.

The appellant had contested the petition for divorce taking up the objection that the respondent was estopped by his own conduct to seek any matrimonial relief. The appellant denied the allegation that she ever treated the respondent or his parents with cruelty or that she parted company of the respondent at her will. The appellant levelled counter-allegation that as a matter of fact from the very beginning, she was subjected to harassment

and cruelty by the respondent and his family members on the pretext of insufficient dowry and as a matter of fact she was turned out of the matrimonial home by the respondent and his family members. The appellant never parted company of the respondent nor she shed away from her responsibility to feed and take care of few months old daughter. On account of respondent having not allowed the appellant to enter the matrimonial home she was compelled to stay away. The appellant stated that on account of demand of dowry having not been met and on account of the white spots on the hands and feet of the appellant, the respondent was upset and specifically expressed that by divorcing the appellant he would marry another beautiful girl. The appellant pleaded that she had been unconditionally ready to get herself rehabilitated in the matrimonial home and was always ready to return to the matrimonial home. The appellant claimed that the respondent himself was guilty of matrimonial wrong and was not entitled to the decree of divorce.

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

- “1. Whether the respondent –wife treated the petitioner- husband with cruelty and deserted him without any reasonable cause? OPP.
2. If Para No.1 is proved whether the petitioner is entitled for the decree of divorce as prayed for? OPP.
3. Whether the petition is not maintainable? OPR
4. Relief.”

Issue No.1 was decided in favour of the respondent as mentioned hereinabove and against the appellant. Issue No.2 was also decided in favour of the respondent.

With the assistance of counsel for the parties we have gone through the evidence which was produced by both the parties to substantiate their respective pleas taken in the pleadings. The respondent had examined his father Dharam Pal as PW2, Ram Phal as PW3 whereas he himself appeared as PW1. The appellant, however, examined herself as RW1, besides examining her father Satish Kumar Goel as RW3 and Dr. Lalak Gupta, as RW2. The respondent and his father while appearing as PW1 and PW2 had furnished affidavits in support of the pleas taken in the petition for divorce. All the three witnesses made an attempt to establish that since January 9, 2011 the appellant had not visited the matrimonial home and had failed to take care of her 4 months old child and the appellant and her parents had refused to take over the custody of the minor daughter Divya.

On the other hand, the appellant had made an attempt to establish that the appellant had been subjected to extreme harassment and cruelty on account of insufficient dowry and her disease of white spots and that false and imaginary stories have been concocted. It is pertinent to mention that the appellant in the present case had not launched any criminal prosecution under Section 498 A IPC. She did not seek maintenance under Section 125 Cr.P.C. The said factors have been relied upon to establish that from the inception the appellant had an intention to return back and not in favour of an any litigation as she wanted to save the marriage. The appellant had made a deposition that she had never abandoned her child. The trial

Court has relied upon a number of judgments of the Hon'ble Supreme Court pertaining to the definition of cruelty which would include both physical and mental cruelty and by applying the said principles, held as follows:-

“39. In the instant case, the most specific and glaring allegation of the petitioner is that on 9.1.2011 the respondent had left the matrimonial home on the pretext of attending interview in TERII at Dhand Road, Kaithal for a regular job and that while leaving the matrimonial home she had left her 4 months old daughter, who was on mother feed, in her matrimonial home with her parents-in-law and after attending interview she did not turn up nor informed her husband i.e. petitioner-in-law.

40. As far as the above mentioned allegation is concerned, from the bare perusal of pleadings of the respondent and her evidence also, it is established that there is no denial of the fact that on 9.1.2011 she had left her matrimonial home on the pretext of attending interview at TERII and while going for interview she had left her five months old daughter in her matrimonial home. It is also an admitted fact that after attending interview the respondent had not return to matrimonial home.

41. It is settled principle of law that fact admitted need not to be proved and therefore, in my considered opinion, on the basis of above admission it stands proved that

since 9.1.2011 the respondent is not residing in her matrimonial home.”

“57. Taking into consideration the entire scenario and the above discussed relevant law in my considered opinion, once the respondent is found guilty of leaving her matrimonial home without any intimation, and that too while leaving her five months old child who was on mother fed, it amounts to cruelty of a very grave category and in view of peculiar facts and circumstances of this case, I hold that the principles laid down in the cases of Gurmohinder Pal Singh (supra), Mahesh Kumar Sinha (supra), Harbir Singh (supra), Ashok Kumar Jain (supra) and Darshan Gupta (supra) are not applicable to the facts and circumstances of the instant case. In view of above discussion the question poised in this petition is hereby answered accordingly and it is hereby held that the respondent had left her matrimonial home without any justifiable reason.”

We have carefully gone through the testimony of appellant wherein she has levelled allegations of maltreatment and that she had been compelled to stay away from the matrimonial home as she was not permitted to enter the house after she returned from the interview on January 9, 2011.

We have also gone through the cross-examination of Shiv Kumar, respondent. He has, in his cross-examination tried to further improve on his case in pleadings by stating that the appellant had disclosed

to him on the second day of marriage that her parents had forcibly married the appellant with him and that she refused to do any house-hold work. The respondent had also gone to the extent of levelling allegation that the appellant had made an attempt to commit suicide. Sunil Sharma, for whom the appellant had refused to prepare tea as per the allegations of respondent, was not examined as a witness. The bonafide of the respondent is clearly indicated from his cross-examination wherein he has stated that he would allow the daughter to meet the appellant but he would not allow her to meet her at the matrimonial house. Intention of the respondent is writ large from his conduct over the last so many years that he has got no intention to permit the appellant to join the matrimonial home. Even otherwise, we have carefully examined the ground that the appellant was required to return from the college by 5.30 p.m. after interview but she did not return back. Respondent has admitted that she used to travel a distance of 5 kms. on her Scooty and thereafter parking the Scotty at Bus Stand, Kaithal she would go in a Maxi Cab/ pick up to the College. The respondent admitted in his cross-examination that no article was found missing from the house after the appellant left the house which clearly indicates that she had never an intention to return back to the matrimonial home. PW2 is certainly an interested witness being the father. The testimony of PW3 which is in the shape of affidavit Ex.PW3/A is on the lines of the respondent while deposing that the appellant has left the matrimonial home for interview and did not return.

We are of the considered opinion that the respondent himself being at fault as per Section 23 (1) (a) of the Hindu Marriage Act is not

entitled to any relief and he has not been able to establish that the appellant had treated him with cruelty or had left his company without any sufficient cause rather it is established on the record that appellant never had any intention to leave the matrimonial home but was compelled to stay away from the home as discussed hereinabove. The findings of the lower Court on issue Nos.1 and 2 is hereby set aside as we do not find any necessary ingredients of cruelty or desertion proved on record.

The appeal is allowed and the judgment and decree dated January 13, 2016 is hereby set aside and the petition of the respondent for divorce is dismissed with costs.

Decree sheet be drawn.

(M.M.S. BEDI)
JUDGE

September 13, 2018
sanjay

(ANUPINDER SINGH GREWAL)
JUDGE

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