

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

(228)

FAO-M-68-2016

Date of Decision: August 01, 2018.

Santosh Rani

.... Appellant

Versus

Dilbag Singh

..... Respondent

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

Present: Mr. L.S. Sidhu, Advocate, for the appellant.

Mr. Piyush Sharma, Advocate, for the respondent.

M.M.S. BEDI, J (ORAL)

Counsel for the respondent-husband submits that he has made his level best to contact the respondent-husband but he has got no instructions.

In view of said circumstances, we are of the opinion that the respondent-husband is adopting an evasive approach to avoid the payment of the arrears of maintenance pendente lite which have accrued to more than sum of Rs.1 lakh.

The defence of the respondent-husband in this appeal is struck off.

We have considered the appeal on merits.

Vide impugned judgment and decree dated 05.01.2016, the petition for divorce filed by the respondent-husband was allowed on the ground that the appellant-wife had treated the respondent-husband with cruelty and that she had deserted the respondent-husband for a period exceeding two years immediately prior to the institution of the petition.

As per the averments in the petition, the parties had married in the year 2000. A child was born out of the wedlock who is in the custody of the appellant-wife. It is averred in the petition for divorce that the appellant-wife treated the respondent-husband with physical and mental cruelty and was never ready to hear any proper advice from the respondent-husband or his parents and her attitude was rough and arrogant. She used to pick up quarrels with the respondent-husband and his family members on false pretexts. However, the respondent-husband had showered love and affection on the appellant-wife but she always misbehaved with the parents of the respondent-husband. As per the allegations, she had left the matrimonial house in the year 2002. The respondent-husband tried to contact her on telephone but she refused to return back. She had lodged a case for cruelty against the respondent-husband and his family members in which the father and mother of the respondent were acquitted and the respondent was convicted for offence under Section 498-A IPC. With the intervention of the panchayat, the parties filed a petition under Section 13-B of the Hindu Marriage Act. The appellant-wife had received a sum of Rs.50,000/- at first motion but at the time of final stage she resiled and did not receive sum of Rs.40,000/-. She did not appear in the Court as such the case was adjourned to 11.08.2014. She did not appear on said date as such the case was adjourned for 22.08.2014. On the said date, the appellant-wife did not appear but the respondent-husband was present in the Court along with remaining amount. Thereafter, the case was adjourned to 01.09.2014. Petition under Section 13-B of the Hindu Marriage Act was dismissed as withdrawn on 01.09.2014 with liberty to the respondent-husband to exercise

his right to seek dissolution of marriage by instituting petition under Section 13 of the Hindu Marriage Act.

The appellant-wife filed written statement taking up the plea that the respondent-husband had kept a concubine, namely, Parkash Kaur, daughter of Kashmir Singh, resident of village Chapati and for that reason, he was seeking divorce. The respondent-husband along with his parents had been subjecting the appellant-wife with cruelty and turned her out of the matrimonial house after 12 months of the marriage when she was on the family way. No maintenance was being paid to her and the minor child for the last 12 years. However, a meager amount of Rs.500/- per month as maintenance ordered in the year 2004 was being paid to her. Serious allegations had been levelled by the appellant-wife in the written statement that dowry articles given in the marriage have been misappropriated by the respondent-husband and his family members. She has denied that she ever misbehaved with the respondent and his family members. The FIR was lodged on the basis of true facts but cancellation report was filed by the police under political influence of the respondent. The respondent-husband was convicted under Section 498-A IPC. However, the father and mother of the respondent were acquitted. It was claimed in the reply by the appellant-wife that they were wrongly acquitted. The factum of filing of petition under Section 13-B of the Hindu Marriage Act was admitted but she had been defrauded regarding quantum of permanent alimony. As per agreement between the parties, no provision was made regarding the payment of maintenance to the minor child as a result of which she opted not to appear before the Court for dissolution of marriage.

The lower Court had framed the following issues:

- “1. Whether after the solemnization of marriage the respondent has treated the petitioner with cruelty? OPP.*
- 2. Whether the respondent has deserted the petitioner for a period exceeding two years immediately prior to the institution of the petition? OPP.*
- 3. Relief.”*

On appreciation of evidence, issues No.1 and 2 were decided in favour of the respondent.

The lower Court has granted the decree of divorce to the respondent-husband on the following grounds:

(i) In the criminal case regarding demand of dowry registered by the appellant against the respondent, parents of the respondent have been acquitted vide judgment Ex.P-1 dated 14.09.2011 indicating that she had leveled false allegations regarding dowry against the family members of the respondent.

(ii) The appellant had leveled false allegations against the character of the respondent regarding his relationship with Parkash Kaur.

(iii) The conduct of the appellant in not appearing in proceedings under Section 13-B of the Hindu Marriage Act would tantamount to cruelty.

(iv) The appellant had been insisting the respondent to live separately from his parents and she had levelled false allegations against them.

(v) The appellant had deserted the respondent as she had been living separately from the year 2002.

We have gone through the record and found that the lower Court has wrongly appreciated the evidence on record.

It is the case of the appellant throughout that she had been thrown out of the matrimonial home along with her child on account of relationship of the respondent with alleged concubine who has been named in the petition. The circumstances for living separately have been explained by the wife. While stating the facts on oath, she had stuck to her allegations.

The circumstance of the appellant having been made to stay away from the matrimonial home along with the child without paying her any maintenance is indicative of the wrongs committed by the husband disentitling him to any relief under Section 23-A of the Hindu Marriage Act. It is settled principle of law that merely because a wife had no sufficient resources for establishing the allegation of relationship of the husband with another lady, is not always sufficient enough to grant relief to the husband. No straightjacket formula can be laid down for granting divorce in such circumstances. Reference in this context can be made to the observations made by this Court in **Indira Bhardwaj Vs. Rajesh Bhardwaj, FAO No.M-124 of 2009 decided on 29.10.2015** and the Apex Court in **Ramchander Vs. Ananta, 2015 (2) Civil Court Cases 144.**

It is settled principle of law that the wife along with the minor child would not stay away from the matrimonial home unless until she has been compelled to stay away from the matrimonial house. She has leveled allegations of demand of dowry and cruelty against the husband which have been established by the conviction of the respondent vide judgment Ex.P-1. The parents of the respondent having been acquitted is no ground to arrive at a conclusion that she had left matrimonial home without any reasonable cause.

The findings of the lower Court on both the issues are presumptive not based on fair appreciation of evidence and thus deserve to be reversed.

The lower Court has not given any finding that the appellant had any intention to desert the respondent.

It is settled principle of law that the desertion as well as the animus deserendi have to be established before giving the finding of the spouse against the other spouse. In the absence of any such finding, the judgment of the lower Court on issue No.2 is also not sustainable. Findings on issue No. 1 and 2 are therefore set aside. The appeal is allowed. Judgment and decree of divorce dated 15.01.2016 granted in favour of the respondent are hereby set aside. The petition of respondent-husband for divorce is dismissed.

So far as the arrears of interim maintenance which have accumulated beyond sum of Rs. 1 lakh, are concerned, the same can always be recovered by the appellant by filing execution application before the competent Court of jurisdiction at Ferozepur.

Decree sheet be drawn accordingly.

(M.M.S. BEDI)
JUDGE

August 01, 2018
harsha

(ANUPINDER SINGH GREWAL)
JUDGE

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