

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M- 113 of 2017

Date of Decision: September 24, 2018

Babita

.....Appellant

Vs.

Kul Bhushan

.....Respondent

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

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Present: Mr.Anshuman Dalal, Advocate for the appellant.
Mr. C.B. Goel, Advocate for the respondent.

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M.M.S. BEDI, J.

The present appeal has been preferred by wife being dissatisfied with the judgment and decree dated March 30, 2017 allowing the petition under Section 13 of the Hindu Marriage Act of the respondent- husband for dissolution of marriage.

The respondent had sought decree of divorce on the ground of desertion i.e. for not joining the company of the respondent. As per the averments in the petition for divorce, pleaded by respondent, he was married to the appellant on May 5, 2003 at Rohtak. A son Rohan was born out of the wedlock. The behaviour of the appellant as well as her family was never cordial towards the respondent and his family members since the inception of the marriage. The appellant did not mend her behaviour and continued

with her non-cooperative attitude and tried to humiliate the respondent in presence of his relatives and staff members. The appellant is working as Staff Nurse on contract basis whereas the respondent had joined Health Department in Government of Haryana. After the birth of child, the appellant started pressurizing the respondent to live separately from his parents near the residence of her parents. The respondent refused to accept the said condition as such the parents of the appellant started pressurizing the respondent to purchase a plot in Rohtak in the name of the appellant. The respondent gave a sum of Rs.3 lacs to the appellant to purchase a plot but the plot was purchased in the name of mother of the appellant with ulterior motive. Thereafter the appellant and her parents demanded a sum of Rs.10 lacs for raising construction of house on that plot. When the respondent could not fulfill the demand of the appellant, she left her company and started living with her parents without any reason. Panchayat was convened to persuade the appellant but she did not join the company of the respondent. The respondent was allotted a quarter in residential colony of Hospital at Kalanaur. The respondent requested the appellant to join him but she refused to do so. The respondent had noticed some outsiders frequently visiting the appellant. When the appellant was asked about the reason for roaming with those persons, the appellant threatened to involve the respondent in false case with dire consequences. The appellant had been living separately from the respondent since November 2014 in adultery. On the basis of the above said grounds the respondent sought dissolution of his marriage with the appellant.

On notice having been received by the appellant she filed written statement alleging that a huge amount was spent by her parents on marriage and sufficient dowry articles were given to the respondent and his family members as per their demand but they were not satisfied with the dowry. They demanded cash amount in place of furniture as such a sum of Rs.62000/- was deposited by the parents of the appellant in her name. After some time, the respondent and his family members started taunting the appellant for bringing less dowry. After 15-20 days of the marriage, the appellant and the respondent had gone to Himachal on account of posting of the respondent. The mother-in-law of the respondent stayed with them. The respondent taunted the appellant at that occasion also. The respondent alleged that she was of short height but had been accepted only on account of the fact that she had passed staff nurse course. The respondent asked the appellant to withdraw sum of Rs.62000/-. A sum of Rs.4000/- to Rs.5000/- was received by the appellant at the time of Muh Dikhai ceremony and the same was snatched by the respondent and his family members by saying that it was their money. The respondent had sent two boys in the room of the appellant. One of them was Lab Technician and the other was Radiographer while he himself was sitting in the park. The door was not opened by the appellant being a devoted Hindu lady. The respondent never provided house-hold goods to the appellant. The respondent never took care of her and even locked landline telephone in a suitcase when he went on his duty. Thereafter the respondent and appellant had come back to Rohtak and the appellant went to her parental house. After 10/15 days, the mother of the respondent brought her back. The appellant alleged that when she was 3/4

months pregnant, the respondent and his family members pressurized her to withdraw an amount of Rs.50000/- from her account as such she had to withdraw amount on August 6, 2003. Thereafter a demand of Rs.5 lacs was raised by the respondent for opening of the shop. After one month, the appellant had gone to her parents house. She disclosed about the said demand but her parents showed inability to fulfill the said demand. The respondent and his family members threatened the appellant that they would not keep her with them if she did not bring the said amount from her parental home. The parents of the appellant arranged the amount and handed over the same to the respondent and his family members but the respondent did not open any shop. On account of the mental harassment and physical torture the appellant had to come back to her parental house but the respondent never came to take the appellant back. The respondent did not come even after the birth of the child. The appellant urged in the written statement that Anju, real sister of the Bhabhi of the respondent was rejected by the appellant's brother for marriage purpose. Due to said reason, the sister-in-law of the respondent wanted to take revenge upon the appellant. Later on, the appellant came to learn that Sheela and the respondent were having illicit relations. On account of that, Sheela used to harass the appellant by raising dowry demand. The parties had resided in rented house for improving the relationship when their son was 2- 2/12 years old. The appellant joined the job of Staff Nurse in Hissar on contract basis. The respondent and his family members sent a Panchayat in which respondent was not involved. The respondent joined Government job and brought the appellant back for religious festival. The respondent told the appellant to

bear her expenses and that of her child. The respondent never provided anything to the appellant. There was nobody to look after the child of the appellant as such she had to leave the child at her parental home whenever she used to go on her duty. The appellant alleged that no Panchayat was ever convened by the respondent and his family members.

On the pleadings of the parties, the lower Court framed the following issues:-

- “1. Whether the petitioner is entitled to a decree for divorce on the grounds mentioned in the petition?
OPP.
2. Whether this petition is not maintainable? OPR.
3. Relief.”

Issue No.1 was decided against the appellant and in favour of the respondent. Issue No.2 was not adjudicated upon as the appellant allegedly did not lead any evidence to establish non-maintainability of the petition. On the basis of the findings on issues No.1 and 2, the petition under Section 13 of the Hindu Marriage Act was allowed and marriage of the appellant with respondent was dissolved.

Learned counsel for the appellant has vehemently contended that the lower Court has granted decree of divorce to the respondent on unwarranted assumptions and presumptions on misreading of the evidence. The respondent had filed the petition for dissolution of marriage mainly on the ground of adultery of the appellant but the said ground has not been proved as per the judgment of the lower Court. Therefore, there was no

reason for dissolving the marriage on the ground that the appellant had left the company of the respondent without any sufficient reason.

On the other hand, Mr. C.B. Goel, learned counsel for the respondent has urged that the parties stayed together only for a short duration and the appellant has, without any reason, failed to resume cohabitation with the respondent causing cruelty to him. The allegation of the cruelty levelled in the petition stand established by the evidence on record as such the decree of divorce deserved to be granted to the respondent on the ground of cruelty itself.

We have considered the rival contentions of counsel for both the parties. It is pertinent to observe here that the allegation of cruelty and the ground of adultery levelled by the respondent- husband did not find favour with the lower Court and the divorce has been granted solely on the ground that the appellant had left the company of the respondent without any sufficient reason, implying thereby that the decree of divorce has been granted on the ground of desertion rejecting the ground of cruelty raised by the respondent. The respondent has not filed any cross-objections challenging the findings of the lower Court dismissing his claim for divorce on the basis of cruelty. Though the respondent had a legal right to challenge the same as per the provisions of Order 41 Rule 22 CPC but Mr. Goel, counsel for the respondent has urged that under provisions of Order 41 Rule 33 CPC, this Court has got ample power to pass any decree and make order which ought to have been passed by the lower Court. The said power can be exercised in favour of the respondent even if the respondent has not filed any appeal or cross-objection against the findings on issue No.1

We have considered the evidence of the parties with an objective to determine if there are sufficient grounds established by the respondent to get a decree of divorce. The respondent has produced PW2 Jai Narain and PW2 Sri Narain as witnesses and has herself appeared as PW1 whereas the appellant herself appeared as RW1. Respondent had tendered his affidavit Ex.PW1/A to substantiate the pleas taken up in the divorce petition. The entire claim of the appellant was put to the respondent in cross-examination. He has admitted that sum of Rs.62000/- was deposited by the parents of the appellant in her account in place of furniture but he has denied that the appellant was pressurized to withdraw sum of Rs.50000/- from her account on August 6, 2003. Respondent has admitted in his cross-examination that he did not visit the house of the appellant after the delivery as he was not informed in this regard but his father had visited the house of the appellant to see the child. The respondent was not able to give the dates when Panchayat had been sent in the year 2003-2004 to settle the controversy. The respondent admitted that he has been living separately from the appellant since November 2011. The respondent himself admitted in cross-examination that he had never seen outsiders visiting the parental house as alleged by him in the affidavit but has tried to clarify his averment in the affidavit by stating that the appellant had herself hold him about this. Respondent also admitted that the appellant has not filed any case against the respondent and denied the suggestion that she wanted to reside with the respondent. PW2 Jai Narain, who is father of the respondent has stated in his affidavit Ex.PW2/A that the parents of the appellant started pressurizing the respondent to purchase a plot at Rewari in the name of the appellant.

The respondent gave sum of Rs.3 lacs to the appellant for purchasing the plot but plot was purchased in the name of mother of the appellant with ulterior motive. The appellant and her parents demanded a sum of Rs.10 lacs from the respondent for construction of the house over the plot but on account of their inability to accept this demand, the appellant had left the company of the respondent and started living with her parents without any reason or fault of the respondent. PW2 has stated that Panchayat was convened in the brother-hood to persuade the appellant and her parents to send her with the respondent but all in vein. Jai Narain has stated that the respondent was allotted a quarter in the residential colony of Hospital at Kalanaur and respondent requested the appellant time and again to live with him at Kalanaur but she flatly refused to live with him. In the cross-examination, father of respondent No.2 has admitted that he had never met his grand-son for the last 8/9 years and he was not able to point out the time when the appellant had demanded Rs.10 lacs from the respondent. Despite he being an interested witness, he has not been able to point out any ground of cruelty having been committed by the appellant towards the respondent rather it is apparent from his testimony that he had never made any attempt to bring about re-union between the parties. The testimony of PW3 Sri Narain in the shape of affidavit Ex.PW3/A has also been appreciated by us. He has tried to support the respondent by stating that the behaviour of the appellant was not good with the respondent. He is the 'Tau' of the respondent and tried to establish the reason for respondent to live separately. He has deposed that the appellant after the birth of her son started pressurizing the respondent to live separately from the parents otherwise she

would not stay with the respondent. The appellant and her parents demanded a sum of Rs.10 lacs for construction of the house on a plot which was purchased for a sum of Rs.3 lacs by the appellant's mother in her name, though the money was paid by the respondent. But on account of money having not been paid, the appellant had left the company of the respondent.

The respondent herself appeared as RW1 and gave her testimony in the shape of affidavit Ex.RW1/A levelling allegations that on account of demand of dowry by the respondent, sum of Rs.62000/- was deposited in her account by her parents but she was being taunted for bringing inadequate dowry. The appellant had been accepted by the family of the respondent as she had passed the Staff Nurse course otherwise she was taunted by her mother-in-law for being less height. The appellant substantiated her allegations in the written statement by deposing on the same lines in her affidavit. Appellant has levelled allegation that the respondent always wanted to assassinate the character of the appellant and wanted to get rid of her. The appellant and her family members had tried their level best to persuade the respondent and his family members but they refused to keep and maintain the appellant. The respondent never made any effort to live with the appellant. The appellant was cross-examined at length. She has denied in her cross-examination that she had relations with wrong people on account of which she did not want to stay with her husband.

We have gone through the statements of the witnesses produced by both the parties and are of the opinion that in the testimony of the witnesses of respondent, no description has been given of the steps taken by

them to bring about reconciliation between the parties by visiting the appellant along with the child to the matrimonial home. The case put-forth by the respondent - husband is that on account of demand of the appellant and her family members for Rs.10 lacs for construction of the house on a plot purchased in the name of mother of the appellant for a sum of Rs.3 lacs given by the respondent, appellant had refused to stay with him. Such a ground is on the face of it flimsy and improbable. No documentary evidence has been produced regarding the payment of sum of Rs.3 lacs by the respondent to the appellant for purchase of the plot or same having been purchased by the money of the respondent or demand of Rs.10 lacs had been raised by the appellant for raising construction on the same. The reason pleaded in the petition for appellant staying away from the company of the respondent has not been substantiated on the record. It is settled principle of law that a person who comes forward with a plea in his pleadings has to establish the same and he cannot take the advantage of the weakness of the other side. The respondent has failed to establish that any bonafide attempt had been made by the respondent or his family members to bring about reconciliation and to resume re-union, rather vague allegations of adultery have been levelled against the appellant in the pleadings as well as in the evidence. It is settled principle of law that no one can be permitted to take advantage of his own wrong. The lower Court has granted the decree of divorce to the respondent on the ground that without any reason the appellant had refused to stay in the company of the respondent but the facts apparent on the record are absolutely contrary. There is no evidence on the record available to show that any attempt was ever made by the respondent

or any of his family members to require the appellant to come and stay in the matrimonial home. Vague allegations of convening panchayat are not sufficient enough to arrive at a conclusion that the appellant is at wrong. Had the appellant got any intention to humiliate the respondent and she wanted to cease relationship, she might have filed any proceedings against him but with an objective to kept the relationship congenial no such steps have been taken by the appellant.

In view of the above circumstances, the findings of the lower Court on issue No.1 are held as wrong and is liable to be set aside.

The appeal is allowed. Judgment of the lower Court granting decree of divorce to the respondent is hereby set aside. The petition for divorce filed by the respondent under Section 13 of the Hindu Marriage Act is dismissed. Let the decree sheet be prepared.

(M.M.S. BEDI)
JUDGE

September 24, 2018
sanjay

(ANUPINDER SINGH GREWAL)
JUDGE

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