

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

F.A.O.-M-159 of 2017 (O&M)

Date of Decision: 11.05.2018

Maninder Kaur

....Appellant (s)

Versus

Harvinder Singh

Respondent(s)

***CORAM:- HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE HARI PAL VERMA***

Present:- Mr. APS Mann, Advocate
for the appellant(s).

Mr. Vinod Kumar, Advocate
for the respondent.

HARI PAL VERMA, J.

The appellant-Maninder Kaur has preferred the present appeal challenging the judgment and decree dated 16.05.2017 passed by learned Additional District Judge, Hoshiarpur, whereby the petition filed by her under Section 13 of the Hindu Marriage Act (for short, “the Act”) seeking dissolution of marriage by way of a decree of divorce, was dismissed.

Briefly stated, marriage between the parties was solemnized on 02.09.2012 and out this wedlock, no child was born. The respondent-husband and the in-laws of the appellant-wife were not satisfied with the arrangement of marriage and had shown their dissatisfaction with the

dowry given in the marriage. The husband started complaining that the appellant is not pretty and not a suitable match for him. He used to take liquor and other intoxicants and thereafter, he hurled filthy abuses at the appellant daily. The appellant tried to restrain the respondent from taking excess liquor, but instead of stopping liquor, the respondent used to rebuke her. Two months after the marriage, the respondent left for abroad with an assurance that he will make an arrangement for calling the appellant there. But after reaching Greece, the respondent telephonically informed the appellant that he has no intention to call her to Greece and he will solemnize marriage with a girl of his choice there. When the appellant had brought this fact to the notice of her in-laws, they replied that they could not interfere in the matrimonial life of their son. The appellant brought this fact to the notice of her parents as well, who convened a meeting with the family members of the respondent. However, the family members of the respondent reiterated their stand that they will not interfere in the matrimonial life of the appellant and the respondent. Finding no alternative, the appellant started residing with her parents from 01.11.2013 onwards. The appellant made repeated entreaties to the respondent for her rehabilitation in her matrimonial house or abroad, but the respondent did not listen to her and rather, openly reiterated his desire not to call the appellant to Greece or to resume cohabitation with her. Since then, the respondent is not responding to the appellant and is not willing to treat her as his wife. Thus, the act and conduct of the respondent is sufficient to grant a decree of divorce on the ground of cruelty and desertion.

The respondent has been represented by his attorney namely Amarjit Singh and written statement has been filed, taking preliminary objections of maintainability and concealment of facts by the appellant. On merits, it has been denied that prior to marriage, the respondent was residing in Greece. Rather, he was residing in Italy. It has been denied that the respondent ever misbehaved with the appellant under the influence of liquor or abused her in any manner. The appellant was extended due respect in the matrimonial home and all possible amenities were provided commensurating her status.

The Family Court after hearing both the sides and appreciating the evidence on record had dismissed the divorce petition filed under Section 13 of the Act and returned a finding of fact that though the appellant-wife has alleged that she has been deserted since 01.11.2013, but at the same time, she has been receiving payment from the respondent-husband even thereafter and in this backdrop, it cannot be held that the respondent has deserted the appellant or he intends to bring the cohabitation to an end. Similarly, as regards cruelty on the part of the respondent, the Family Court held that except the bald assertion of the appellant that the respondent has expressed his disliking for her and dissatisfaction *qua* the dowry articles, no other instance of cruelty has been pleaded to show that she is a victim of cruel treatment at the hands of the respondent.

Aggrieved from the dismissal of her petition, the appellant has preferred the present appeal.

Learned counsel for the appellant has argued that the respondent-husband has made no sincere attempt to come to India to participate in any reconciliation proceedings with the appellant-wife. In the entire matrimonial proceedings before the Family Court, the respondent has opted to appear through his power of attorney Amarjit Singh, who is his father. Even the power of attorney executed by the respondent - Harvinder Singh in favour of his father Amarjit Singh was not duly embossed by the notary in India. Thus, the power of attorney carried no legal sanctity and therefore, the holder of the power of attorney was not authorized to appear. It has further been submitted that the trial Court has committed a gross error while overlooking the fact that the basic right of the appellant to stay and cohabit with her husband either in India or abroad has been violated. Therefore, the very purpose of the marriage was patently defeated by the respondent-husband by not residing with the appellant in India or by calling her abroad, which is sufficient to establish that the respondent has deserted the appellant without any justifiable cause. The Family Court while relying upon copy of passport of the respondent Ex.R2, has erred in holding that the respondent came to India on 18.11.2013 and cohabited with the appellant for 4½ months. In fact, the appellant was turned out of her matrimonial home on 01.11.2013 i.e. much before the arrival of the respondent in India, which fact stood proved by her witnesses. Even if, the respondent came back to India on 18.11.2013, it was not to cohabit with the appellant who had since gone back to her parental house because of the compelling reasons.

Learned counsel for the appellant has further submitted that the Family Court has heavily relied upon the statement of the appellant in her cross-examination, wherein she has admitted that the respondent wanted to call her to Italy, but the trial Court has failed to appreciate the fact that no document was proved by the respondent to show that any application for her visa and immigration etc. had ever been moved before the Italian Government to facilitate her immigration to Italy. Rather, the father of the respondent/the attorney, has admitted that neither his son had taken the appellant to Italy nor he had sent any sponsorship for her immigration.

We have heard learned counsel for the appellant and perused the record.

The appellant has filed a petition under Section 13 of the Act for dissolution of marriage on the ground of cruelty and desertion. No plausible reason has been shown by the respondent-husband to desert the appellant-wife. The respondent has not made any sincere efforts to take the appellant with him abroad or to cohabit with her in India. Instead of contesting the case himself or to controvert the allegations levelled by the appellant, the respondent has opted to contest the petition under Section 13 of the Act as well as the present appeal through his power of attorney Amarjit Singh, who is his father. The attorney can never be in a position to admit or controvert the contents, as detailed in the petition seeking dissolution of marriage. Generally, no wife would like to get her marriage dissolved unless there are very serious compelling reasons. In the case in hand, after the marriage, the respondent had gone abroad and did not make

any effort to call the appellant to join his company. Therefore, the ground of desertion is fully proved.

In the divorce petition filed by the appellant-wife, there are clear allegations against the respondent-husband that during the period, the respondent resided with the appellant in the matrimonial home, he used to take liquor and other intoxicants daily and used to hurl filthy abuses at her and whenever the appellant tried to stop him from taking excess liquor, he used to rebuke the appellant-wife on the plea that he has spent the money from his own pocket. Two months after the marriage, the respondent left for abroad with an assurance that he will make arrangement for calling the appellant abroad, but he did not make such efforts. Rather, he telephonically informed the appellant about his intention not to call her to Greece and that he will solemnize marriage with a girl of his choice there. When the appellant brought these facts to the notice of her in-laws as well as parents and a meeting was convened, the family members of the respondent have stated that they will not interfere in the matrimonial life of the parties and rather, asked the parents of the appellant to take her back to their village. In this manner, the appellant was taken to her parental house on 01.11.2013 where she is residing with her parents. Though the respondent had reportedly returned to India on 18.11.2013, but he did not make any effort to resume cohabitation with the appellant. Thus, the element of desertion stood established, as despite being in India, the respondent neither stayed with the appellant nor made any effort to bring her back to her matrimonial home. The fact that the entire pleadings, right from the Family Court to this Court, have been signed by the attorney of

the respondent-Amarjit Singh, who is his father, is sufficient to show that the respondent has dealt with the pious institution of marriage in a very casual manner. Therefore, this Court finds that in the case in hand, the appellant has been able to establish the existence of elements of 'desertion' and 'cruelty', which are sufficient enough to pass a decree of divorce in favour of the appellant-wife and against the respondent-husband. We may refer to the judgment of Hon'ble the Supreme Court in the case of **Naveen Kohli v. Neelu Kohli 2006(4) SCC 558**, wherein it was held as under:-

“Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented concrete instances of human behaviour as bring the institution of marriage into disrepute.

We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie

the law in such cases do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.

Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.”

Accordingly, the present appeal is allowed and the impugned judgment and decree passed by the Family Court is set aside. Consequently, the marriage between the parties is ordered to be dissolved.

Decree sheet be prepared accordingly.

(M.M.S. BEDI)
JUDGE

(HARI PAL VERMA)
JUDGE

May 11, 2018
AK

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No