

In the High Court of Punjab and Haryana at Chandigarh.

FAO-M-214 of 2017 (O&M)

Date of Decision : February 20, 2018

Jyoti Verma*Appellant*

Versus

Hardeep Verma*Respondent*

CORAM: Hon'ble Mr. Justice M.M.S.Bedi
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Ved Parkash, Advocate for the appellant.

Respondent ex-parte.

Gurvinder Singh Gill J.

1. Aggrieved by dismissal of petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), for dissolution of her marriage with respondent, the appellant-wife has filed the present appeal challenging judgment and decree dated 10.8.2017 passed by learned Additional District Judge, Kaithal.
2. The appellant, in her petition under Section 13 of the Act, averred that the marriage of the parties was solemnized on 11.7.2008 and the parties started residing at Sonapat. Sufficient dowry was given at the time of marriage but the respondent and his parents, being dissatisfied with the same used to taunt her, abuse her, beat her, maltreat her and she was forced to do household work

even when she was sick. Upon their demand, the mother of the petitioner gave an amount of ₹ 30,000/- to the respondent but the respondent, who was addicted to liquor and gambling even sold her gold ornaments. Two children were born out of the wedlock. The parties and the children shifted to Kaithal in May, 2011 and thereafter back to Sonapat. Though in August, 2013, the petitioner got a job in Delhi but could not join due to her illness which infuriated the respondent. Ultimately, on 30.7.2013, respondent turned the petitioner and her children out of her matrimonial home. Subsequently, in September, 2013 the petitioner got a job in a Government School at Cheeka, District Kaithal where the respondent visited her and quarreled with her. It is further averred that on 21.7.2014, the respondent sent a dirty SMS on her mobile phone. The petitioner, thus, prayed for dissolution of her marriage by grant of decree of divorce.

3. Despite service through publication, the respondent did not turn up and was proceeded against ex-parte before the lower Court vide order dated 13.12.2016. The petitioner, in order to substantiate her case, herself stepped into the witness box as PW-1 and stated in tune with the case set up by her. She also examined her mother Shyamo Devi as PW-2, who lent corroboration to the statement made by the petitioner.
4. Learned trial Court upon considering the evidence on record, dismissed the petition mainly on the ground that the earlier petitions filed by petitioner under Section 13 of the Act on grounds of cruelty on identical grounds had been withdrawn and that as such the act of cruelty stood condoned. The learned trial Court also reached at a conclusion that the petitioner had been unable to

make out a case of 'desertion' as it was she herself, who had got the job in September, 2013 at Cheeka and that she had made no efforts to restore cohabitation with respondent. Consequently the petition for divorce was dismissed.

5. The appellant, has challenged the said judgment and decree dated 10.8.2017 by filing the present appeal.
6. Though effecting service upon respondent, who had been proceeded against ex-parte before the lower Court, could have been dispensed with but as a matter of abundant caution, this Court had opted to issue notice. Summons have been received back with report from respondent's father to the effect that his son's name is not Hardeep. Finding the aforesaid act to be indicative of the evasive approach of the respondent and members of his family, the respondent was ordered to be proceeded against ex-parte even before this Court.
7. We have heard learned counsel for the appellant and have also perused record of the case.
8. The reason assigned by the lower Court for discarding ground of 'cruelty' i.e. withdrawal of the earlier petition under Section 13 of the Act filed by the appellant on similar grounds cannot be said to be a very sound approach inasmuch as a perusal of the petition under Section 13 of the Act which was filed in the year 2015 discloses the conduct of the respondent upto the year 2014. The act of cruelty, especially mental cruelty can continue even if the husband and wife start residing separately. It is only the physical cruelty which can be said not to have been committed when the husband and wife

reside separately. The act and conduct of the husband spelt out by the appellant in her petition, which has been duly substantiated by her own statement as well as by statement of her mother, is sufficient to constitute physical as well as mental cruelty.

9. In any case, the additional ground of desertion which was taken for the first time by the petitioner is also available and made out in the present case. The lower Court has erroneously discarded the said ground by holding that since the petitioner had herself taken up a job and had herself not taken any initiative to resume cohabitation, therefore, desertion is not made out. A perusal of the petition as well as the statements of the witnesses examined by the petitioner shows that the petitioner had been turned out of her matrimonial home before she took up the contractual job in Cheeka, District Kaithal. The facts reveal that she had not left her matrimonial home out of choice and infact had been thrown out of the same. The circumstances prevailing were hardly conducive for her to stay in her matrimonial home as she was subjected to taunts, maltreatment and beatings at the hands of respondent and his parents.
10. The petitioner having been turned out of her matrimonial home on 30.7.2013 and the petition having been filed on 22.12.2015, would bring the present case within the ambit of 'desertion' within the meaning of section 13(1)(ib) of the Act. There being nothing on record to show that there has been any cohabitation between the parties during the said period of more than two years, the petitioner has been able to make out a case for grant of dissolution of marriage on ground of 'desertion', apart from ground of 'cruelty'.
11. In view of our aforesaid discussion, and bearing in mind the overall facts and

circumstances of the case, we are of the considered view that the appeal merits acceptance. The appeal is accepted and the impugned judgment and decree are hereby set aside. As a result, the petition filed by the appellant under section 13 of the Hindu Marriage Act, 1955, is accepted. The marriage of the parties is hereby dissolved on ground of 'cruelty' as well as 'desertion' by passing a decree of divorce.

12. Decree-sheet be drawn. Parties are left to bear their own costs.

(M.M.S.Bedi)
Judge

(Gurvinder Singh Gill)
Judge

February 20, 2018
kamal

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No