

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M No. 78 of 2019 (O&M)
Date of Decision: 13.3.2019

Gurpreet Singh

.....Appellant

Vs.

Lakhvir Kaur

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Ms. Surinder Kaur Mamli, Advocate
for the appellant.

HARNARESH SINGH GILL, J.

This appeal has been preferred by appellant-husband challenging the judgment dated 21.11.2018 passed by Additional Civil Judge (Sr. Divn.), Fazilka vide which the petition filed by him under Section 9 of the Hindu Marriage Act, 1955 ('Act' for short) for Restitution of Conjugal Rights, was dismissed.

The brief facts of the present case are that marriage of the appellant was solemnized with the respondent in the year 2007 by way of Anand Karaj ceremony. Out of the said wedlock, one child, namely, Ukardeep Singh @ Harmandeep Singh was born. It has been stated that immediately after marriage, the respondent-wife started quarrelling on petty matters and also abused the family members without any reasonable cause. Later, the respondent-wife withdrew from the society of the appellant-husband without any sufficient cause. She had left the matrimonial home

return. While leaving her matrimonial home, the respondent-wife took the golden and silver ornaments and costly clothes along with ₹ 5,000/-. After few days, the appellant went to his in-laws' house and requested the respondent to join her matrimonial home but respondent and her family members refused to send her and told the appellant to first get his share of the property from his father and to settle at Fazilka City after selling the said property. Thus, in this way, the respondent-wife had left the conjugal society of the appellant, without any excuse or cause.

In reply, respondent had admitted her marriage with the appellant but it was averred that the appellant and his family members were greedy persons and after marriage, they had started demanding dowry. It was further averred that her parents had convened several panchayats and requested the appellant to allow the respondent and her son to live in the matrimonial home but, the appellant and his family members were adamant on their demand for a car to which the respondent-wife and her family did not accede.

It was specifically stated that the respondent-wife had filed an application seeking maintenance under Section 125 of the Code of Criminal Procedure, 1973 ('Cr..P.C.' for short) which was decided in favour of the respondent-wife but despite the said order, the appellant-husband had not paid the maintenance amount. Since the amount of maintenance had not been paid by the appellant-husband, the respondent prayed for dismissal of the petition under Section 9 of the Act. She had further submitted that there was a regular threat from the appellant-husband that in case the respondent-wife and her son entered the matrimonial home, they would be eliminated.

After taking into consideration the evidence on record, the

learned trial Court dismissed the petition filed by the appellant-husband under Section 9 of the Act, vide judgment appealed against.

We have heard the learned counsel for the appellant at length.

Learned counsel for the appellant has argued that the petition under Section 9 of the Act has been dismissed by the trial Court without taking into consideration the fact that the respondent-wife is not ready to join her matrimonial home and is levelling vague allegations regarding demand of dowry and beatings against the appellant and his family. It is further argued that the respondent-wife has deserted him without any reasonable cause.

After hearing learned counsel for the appellant, we are of the considered view that the appellant-husband has failed to provide any maintenance to his wife and son even though the petition for seeking maintenance under Section 125 Cr.P.C. was allowed in favour of the respondent-wife. The respondent-wife is staying at her parental house at their mercy. It is clear from the admission of appellant-Gurpreet Singh, who had stepped into the witness box as PW-1, that the maintenance petition was decided in favour of the respondent-wife. Though, he has filed an appeal against the said order, but no stay has been granted nor any order has been placed on record. The appellant has further testified that he has not paid any maintenance amount in cash to the respondent or the minor child. From his statement, it is also clear that he has sufficient source and has not placed on record any documentary evidence to show that he is maintaining his wife and the minor child.

To our mind, the present petition is a clear-cut counter-blast to the proceedings under Section 125 Cr.P.C. which stand decreed in favour of

the respondent-wife. Thus, the appellant is not entitled for restitution of conjugal rights. The judgment dated 21.11.2018 passed by the Additional Civil Judge (Jr. Divn.) is well reasoned judgment and, thus, calls for no interference.

No other point has been urged.

Accordingly, the appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

March 13, 2019
Gurpreet

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No