

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

116

**FAO-M-92-2019 (O&M)
Date of Decision : 27.03.2019**

Kuldeep Kaur

... Appellant

Versus

Varinder Singh

...Respondent

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

Present: Mr. Amit Arora, Advocate for the appellant.

HARNARESH SINGH GILL, J.

This appeal has arisen from the judgment and decree dated 07.03.2019 passed by the learned District Judge, Tarn Taran, whereby petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by respondent-Varinder Singh was allowed and marriage was dissolved.

In brief, the facts are that marriage of respondent-Varinder Singh with appellant-Kuldeep Kaur was solemnized on 15.01.2014 according to Sikh rites and ceremonies. No issue was born out of the wedlock. Respondent-husband filed a petition under Section 13 of the Act for dissolution of his marriage by way of a decree of divorce on the ground of cruelty and desertion. He averred in the petition that immediately after the marriage, the appellant started pressurizing the respondent-husband to live separately

from his family comprising of his old aged parents. Respondent, however, kept persuading the appellant to live in the joint family as it was not possible for him to leave his old aged parents. But the appellant used to pick quarrel on small issues and treated the respondent as well as his old aged parents with cruelty. Quite often, the appellant used to insult the respondent-husband in the presence of his father and acquaintances. The appellant had also threatened the respondent-husband that she would commit suicide after taking some poisonous substance and involve the respondent and his family members in a false case. Ultimately on 28.02.2014, the appellant left the matrimonial home with her parents who took her on the pretext of meeting other family members in her parental house. While leaving, the appellant took away the gold ornaments and jewellery items including cash of Rs.50,000/- which was lying in the almirah of the respondent. After a few days, brother of the appellant came and took away the Alto car. Later on, the appellant had refused to join the company of the respondent-husband reiterating her demand of having a separate house from the other family members. Furthermore, the respondent alongwith Panchayat went to the parental house of the appellant, where she had refused to join the company of the respondent and come back to her matrimonial home. While doing so, the appellant and her family members had insulted the respondent and the Panchayat. Thus, the appellant and respondent have been living separately since 28.02.2014.

In the petition filed by respondent-husband, the appellant had filed written statement stating therein that the respondent-husband had concealed the true and material facts from the Court and had not approached the Court with clean hands. It was further asserted that the respondent and

his family members had taunted and given beatings to the appellant for not bringing sufficient dowry. As per the appellant, it was brought to the notice of the respondent and his family members that the family of the appellant was unable to fulfill the exorbitant demands as they had already given sufficient dowry which was beyond their capacity. It was further the stand of the appellant that under the compelling circumstances, the parents of the appellant had sent her abroad for a bright future.

On the pleadings of the parties, the trial Court framed the following issues.

1. Whether the petitioner is entitled for decree of divorce under Section 13 of the HMA, 1955, on the ground of cruelty and desertion as prayed for?OPP
2. Whether the petitioner has not come to the court with clean hands and is guilty of concealment and suppressing the truth facts?OPR
3. Whether the petitioner has no cause of action or locus standi to file the present petition and the same is not maintainable?OPR
4. Whether the petitioner is estopped by his own act and conduct from filing the present petition?OPR
5. Relief.

The parties led their respective evidence. Under issue No.1, the respondent expressed two grounds to seek divorce from the appellant-wife i.e. cruelty and desertion. It was contended before the trial court that the appellant had left her matrimonial home just after 45 days of marriage and later she never joined the company of the respondent, this according to the respondent-husband amounted to cruelty.

Arguing on the ground of desertion, it has been contended by the learned counsel for the respondent that the appellant had left the matrimonial home after 45 days of her marriage and without any reasonable

cause and had gone to New Zealand without intimating the respondent-husband.

The learned trial Court, while examining the issues, taken into consideration that the appellant-wife had admitted in her cross-examination that she had gone to New Zealand on 19.06.2015 and subsequently returned back for the first time on 03.10.2018. This fact itself makes the case of desertion against the appellant. Thus, trial Court has rightly drawn the conclusion that the respondent-husband is entitled to a decree of divorce on the ground of cruelty and desertion. Issue No.1 was accordingly decided in favour of the respondent. Thus, the petition under Section 13 of the Act, was allowed.

Learned counsel appearing for the appellant has argued that it was the husband who was at fault as he had treated the appellant-wife with cruelty. The respondent-husband and his family members were making exorbitant demands of dowry from the appellant. Moreover, the appellant was taunted and was given beatings because of insufficient dowry brought by her. In the compelling circumstances, parents of the appellant-wife had sent her abroad for a bright future. Thus, he has prayed that the judgment and decree under appeal be set aside.

We have heard the learned counsel for the appellant.

Admittedly, the appellant left her matrimonial home on 28.02.2014. Appellant-Kuldeep Kaur stepped into the witness box as RW-1 and stated that she had been residing at 40-Birdwood Avenue, Papatoetoe, Auckland, New Zealand since June, 2014. In her cross-examination, the appellant admitted that her marriage was solemnized with the respondent on 15.01.2014, whereas she possessed a passport, which was issued in the year

2011. It is admitted by the appellant as well as the witnesses examined by her that an FIR was registered against the respondent and his family members by her father after filing of the present divorce petition by the respondent-husband.

It has come on record that no application has been presented by the appellant, at any stage, against the respondent-husband and his family members alleging harassment caused to her. Admittedly, the marriage was solemnized on 15.01.2014. The appellant left her matrimonial home on 28.02.2014 and she never bothered to return back to her matrimonial home to join the company of the respondent-husband.

It may not be out of place to mention here that the appellant-wife in her cross-examination admitted that she had cleared her IELTS in the year 2015 and had gone to New Zealand on 19.06.2015 and for the first time she came back to India on 03.10.2018, meaning thereby that appellant came from New Zealand after the gap of about 3½ years. From the above facts it is crystal clear that the appellant left her matrimonial home without any reasonable cause and had gone to New Zealand without informing and without the knowledge of her husband. Even while living in New Zealand since June, 2015, the appellant had shown no intention to join the company of the respondent-husband. Thus, the conduct on the part of the appellant amounted to cruelty as well as desertion.

Regarding allegation of illtreatment received by the appellant at the hands of the respondent and his family members, no material by way of evidence, had been placed on record of trial Court.

In view of the above, we do not find any illegality in the order passed by the trial court, which may warrant interference by this court in the

present appeal. Hence, the appeal is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

27.03.2019
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<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>