

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-2890-2019
Date of Decision: 06.05.2019

Inderpreet Singh

.....Appellant

Versus

Manpreet Kaur

.....Respondent

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

Present: Mr. Anirudh Kush, Advocate, for the appellant.

HARNARESH SINGH GILL, J.

Challenge in the present appeal is to the judgment and decree dated 22.11.2018 passed by the learned Principal Judge, Family Court, Ambala, whereby petition filed by the appellant-husband under Section 13(1) of the Hindu Marriage Act, 1955 (for short 'the Act'), has been dismissed.

The appellant-husband had filed the aforesaid petition with the averments that the marriage between the parties was solemnized on 19.05.2002 according to Sikh rites and ceremonies. Two children, namely, Anamveen Kaur (daughter) and Gursimar Singh (son), were born out of the wedlock. The behavior of the respondent-wife was discourteous from the very beginning and she used to create embarrassing situations as also would cause a terror in the minds of the appellant-husband and his family members. The respondent-wife during her stay with the appellant-husband for barely two years did not mend her ways and even after the birth of a female

child, she continued repeating her misdemeanor by raising a further demand that the appellant should abandon his parents and should live separately. Ultimately, the respondent-wife left the matrimonial home on 11.10.2010. All efforts made by the appellant to bring her back went in vain. Faced with this situation, in order to save the matrimonial relationship, the appellant left his parents and started living with the respondent-wife at her parental home. Whenever, the appellant used to visit his parents, the respondent-wife would pick up quarrels with the appellant-husband and told the appellant that if he wanted to save his matrimonial relationship, he should completely abandon his parents. The parents of the appellant could not bear his separation and ultimately, they passed away. The respondent-wife also denied sexual intercourse with the appellant, which amounted to mental cruelty to the appellant. Refusal to keep matrimonial harmony, cohabitation and discharge of other matrimonial obligations led to the withdrawal of the respondent-wife from the society of the appellant and, thus, brought an end to the relationship between the parties. Earlier, the petitions under Section 9 of the Act was withdrawn by the appellant as he had started living with the respondent-wife in her parental house, whereas the petition under Section 25 of the Guardians and Wards Act, filed by the appellant-husband was withdrawn keeping in view the fact that the respondent-wife had tutored the children against him.

Upon notice, the respondent-wife appeared and filed her written statement averring therein that the parties lived

under the same roof till 14.01.2013. The appellant-husband had neither been paying the maintenance amount nor the educational and other expenses of the minor children. The respondent was always ready and willing to live with the respondent-husband and he wanted to get rid of the respondent-wife by leveling totally false and frivolous allegations against her. The petitions filed by the appellant-husband for restitution of conjugal rights and the custody of the children, had been withdrawn by the appellant-husband for the reasons best known to him. There was, however, no interference from the parents of the respondent-wife and it was the appellant-husband, who had turned the respondent-wife out of the matrimonial home and had also neglected the respondent-wife and their children. The allegations that her in-laws had died due to shock because of the conduct of the respondent-wife were denied. It was further averred that the respondent-wife and her children were always ready and willing to live in the company of the appellant-husband but his attitude was always cruel, because the appellant-husband never wanted to rehabilitate the respondent-wife and her children in her matrimonial home.

On the pleadings of the parties, issues were framed and they led their respective evidence.

As stated above, the learned trial Court vide judgment and decree impugned herein, has dismissed the petition filed by the appellant-husband.

Learned counsel appearing for the appellant submits that the learned trial Court has totally ignored the evidence led

by the appellant regarding the cruelty on the part of the respondent-wife. It is further submitted that the very fact of compelling the appellant to live with the respondent-wife at her parental home, would tantamount to cruelty. It was only after that incident that the parents of the appellant-husband died due to shock as they could not bear the separation of their son. Thus, if these events are taken into consideration in totality, it can safely be concluded that the appellant-husband has been treated with cruelty. However, while passing the impugned judgment, the learned trial Court has observed that the respondent-wife was always ready and willing to live with the appellant-husband and thus, there does not arise any question of cruelty.

We have heard learned counsel for the appellant but do not find any merit in the present appeal.

The learned trial Court has rightly found that mere oral averments of the appellant-husband that he was caused cruelty by the respondent-wife without there being any corroborative evidence and specific dates and instances, does not amount to cruelty, physical or mental, on the part of the respondent-wife. While terming the matrimonial difference pointed out by the appellant-husband in his petition as minor wear and tear of the matrimonial life, in our opinion, the conclusion drawn by the learned trial Court that the action of the respondent-wife in not initiating any criminal proceedings against the appellant-husband and his family members, goes a long way to show that she had no ill-will towards the appellant-

husband, is perfectly justified. Rather, the said conduct shows that she wanted to preserve and maintain her matrimonial relationship with the appellant-husband. Testimony of PW2-Madan Lal was termed to be hearsay evidence as it was found that he himself had never seen the respondent-wife quarreling with the appellant. Thus, it was held that the appellant-husband was not entitled to the decree of divorce on the ground of cruelty.

As regards desertion, it was found that after the respondent-wife had allegedly left the matrimonial home, the appellant-husband, as per his own version, started residing with the respondent-wife in her parental home. Thus, it was rightly held that the alleged act of cruelty and desertion once condoned, cannot be taken as a ground specifically for seeking divorce in view of Section 13(1)(a) of the Act. The learned trial Court in para No.26 of its judgment has held as under:-

“26. In the instant case, the contention of the petitioner is that the respondent has withdrawn from his coeity without any sufficient cause with effect from 11.10.2010 when she left her matrimonial home. However, no such evidence has been led by the petitioner which may prove that the respondent left her matrimonial home on 11.10.2010 with an intention to put the cohabitation to an end permanently. Rather as per the admitted case of both the parties, they resided together in the old house owned by the parents of the respondent till January,

2013. The contention raised by the petitioner is that he was turned out of the above said house owned by the parents of the respondent in the month of January, 2013. It implies that even after the respondent left her matrimonial home on 11.10.2010, she was still willing to reside with the respondent. In these circumstances, the contention of the petitioner to the effect that the respondent left her matrimonial home with an intention to put the cohabitation to an end permanently cannot be accepted.”

The learned trial Court has, thus, found that from the evidence on record, it stood established that the respondent-wife along with the children was ready to return to her matrimonial home and cohabit with the appellant-husband.

In our opinion, the findings recorded by the learned trial Court cannot be faulted. In matrimonial cases, either of the spouses cannot be allowed to seek a divorce on the allegations/grounds, which ceased to exist with the parties living together after the alleged grounds of cruelty/desertion. The conduct of the appellant-husband in withdrawing the petition under Section 9 of the Act and the petition under Section 25 of the Guardians and Wards Act, speaks volumes of the fact that the parties had reconciled their disputes/differences and started residing in the company of each other. From the evidence led by the respondent-wife, a finding has been recorded that she is ready and willing to cohabit with the appellant-husband. Thus,

we are of the considered opinion that the minor wear and tear of a married life cannot be termed to be a cruelty or desertion so as to maintain the proceedings for divorce at the instance of either of the spouses.

No other point has been urged.

In view of the above, we do not find any illegality or perversity in the judgment and decree passed by the learned trial Court. Consequently, finding no merit in the present appeal, the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

6.5.2019

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Whether Speaking/ Reasoned:

Whether Reportable:

(HARNARESH SINGH GILL)
JUDGE

Yes/ No

Yes/ No