

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

**IOIN-FAO-128-M of 2005
FAO-128-M of 2005 (O&M)
DATE OF DECISION : 20.12.2019**

Lakhwinder Kaur

.....Appellant

Versus

Jasbir Singh

.....Respondent

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present : Mr. B.P.S.Virk, Advocate,
for the appellant.

None for the respondent.

KARAMJIT SINGH, J.

The instant appeal has been preferred by the appellant-wife impugning the judgment and decree dated 22.03.2005, passed by Learned Additional District Judge (Adhoc), Patiala (hereinafter referred to as the 'Ld. Court below') whereby, the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the HMA') for granting decree of divorce, was allowed in favour of the husband.

A few facts necessary for adjudication of the case, as narrated in the petition filed by the respondent-husband before the Ld. Court below, may be noticed. Marriage between the parties was solemnized on 24.11.1997 at Samana, District Patiala. After the marriage, the parties resided and cohabited together as husband and wife till September, 1999 but no child was borne out the wedlock. According to the husband, the

appellant-wife was not cooperative due to which their relations worsened. The appellant-wife used to misbehave with her husband in front of respectable. She also lodged false FIR against her husband and other and members of his family alleging cruelty on their part. The respondent-husband made all efforts to settle the dispute amicably. The matter was compromised and an amount of Rs.2.5 lac was paid by him to his wife in lieu of her entire maintenance and dowry articles. Thereafter, the parties filed joint petition under Section 13-B of the HMA and got recorded their statements at the time of first motion. However, the said Divorce Petition was disposed of on 25.01.2002, as the appellant back-tracked from the above said compromise and did not appear in the court concerned for getting recorded her consent statement at the time of second motion. The appellant-wife deserted her husband in the month of September, 1999 and thereafter she never came back. Hence, the divorce petition was filed by the husband on the ground of cruelty and desertion,.

Per contra, the case was contested by the appellant-wife and she also pleaded that she never uttered any unparliamentary language. She further contended that the respondent-husband and his family members forced her to bring more dowry and money from her parents for purchase of car and she brought the money from her parents and handed it over to the husband but after some time he again demanded more money from her parents and subjected her to cruelty. She denied the fact that she ever accepted Rs.2.5 lacs from her husband as full and final settlement of her claim regarding maintenance and dowry articles. Actually, the husband agreed to pay Rs.4 lacs by way of compromise regarding all her claims.

However, the said compromise was not materialized as the respondent failed to pay the aforesaid amount to her. Consequently, the divorce petition filed under Section 13-B of the HMA was dismissed. It was pleaded that the present petition also deserves to be dismissed.

The respondent-husband filed replication controverting the averments made in the written statement of appellant-wife and on such pleadings of the parties, the following issues were framed by the Ld. Court below:-

- “1. Whether the respondent has deserted the petitioner since September, 1999 without any reasonable cause as alleged in the petition? OPA*
- 2. Whether the respondent has treated the petitioner with cruelty as alleged in the petition? OPA*
- 3. Relief.*

The respondent-husband himself appeared in the witness-box as PW-5 and proved original agreement-Ex.P-1, vide which terms of settlement *qua* petition moved under Section 13-B of the HMA were recorded, as well as other documents Ex.P-2 to Ex.P-6 relating to the said compromise and filing of joint petition under Section 13-B of the HMA. PW2-Satnam Singh and PW4-Takhat Singh also proved the execution of agreement, Ex.P1, being its marginal witnesses, PW1-Inderjit Singh and PW3-Joginder Singh were also examined by the respondent-husband to prove his case.

On the other hand, appellant-wife herself appeared in the witness box as RW2. She also examined her father Avtar Singh as RW3 and Hazur Singh as RW1.

After hearing counsel for the parties, the learned court below passed the decree of divorce in favour of the respondent-husband on the ground of desertion as well as cruelty. Aggrieved by the impugned judgment and decree, the present appeal has been filed by the appellant-wife.

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

Learned counsel for the appellant-wife has challenged the impugned judgment and decree. It is contended that actually respondent-husband ill-treated his wife in the matrimonial home as her parents failed to fulfill the demand of more dowry raised by him. It is further contended that even FIR was also registered against the respondent-husband under Section 406 and 498A IPC with regard to the cruelty caused by the respondent-husband to his wife. Learned counsel further argued that with the intervention of the respectables, compromise was also effected between the parties, as per which, the respondent-husband agreed to pay Rs.4,00,000/- for settlement of her claims. On the basis of the said settlement, petition under Section 13-B of the HMA was filed, however, lateron, the respondent retracted and failed to pay the settled amount of Rs.4,00,000/- and finally the divorce petition filed under Section 13-B of the HMA was dismissed. Learned counsel for the appellant-wife further contended that the said act of backtracking also amounted to cruelty on the part of the husband. While concluding his arguments, learned counsel for the appellant-wife urged that the appeal deserves to be allowed, as the husband cannot take benefit of his own wrongs.

We have considered the submissions made by the learned counsel for the appellant.

Admittedly, the parties got married on 24.11.1997 but no child was born out of the said wedlock. Due to matrimonial dispute, the parties are living separately for the last about 20 years. It is not disputed that in 2001, compromise was effected between the parties and then, the parties filed joint petition under Section 13-B of the HMA. It is the case of the appellant that as per the said compromise, she was to get Rs.4,00,000/- from her husband but the said amount was never paid to her and that is why the above-said joint petition under Section 13-B of the HMA was dismissed. On the other hand, the plea of the respondent is that entire settled amount of Rs.2,50,000/- was paid to the appellant, as per the settlement deed (Ex.P1), but lateron, the appellant backed out.

Appellant-Lakhwinder Kaur while appearing in the witness-box, admitted that joint petition under Section 13-B of the HMA was filed by the parties. She also admitted her signatures on the compromise deed (Ex.P1). The execution of the said compromise deed has also been proved by PW2-Satnam Singh and PW4-Takhat Singh, in whose presence the said compromise deed was executed by both the parties. Even, RW3-Avtar Singh, father of the appellant, admitted the execution of the compromise deed (Ex.P1), in his deposition. So, the execution of the compromise deed (Ex.P1), stands proved. As per the said compromise deed, the dispute between the parties was settled on 18.07.2001 and as per the settlement, appellant received Rs.2,50,000/- in total from the respondent and the parties also agreed to file joint petition under Section 13-B of the HMA.

Accordingly, the parties filed joint divorce petition on 20.07.2001. However, lateron, appellant had broken the promise and consequently, the said divorce petition was dismissed. As per the order (Ex.PZ/1) dated 22.02.2003, the application moved by the appellant under Section 24 of the HMA in the present divorce petition was dismissed by the court of learned Additional District Judge, Patiala, while observing that she had already received Rs.2,50,000/- from the husband, in terms of aforesaid compromise deed. Even the application filed by the appellant under Section 125 Cr.P.C for grant of maintenance was also dismissed by the revisional court on the same very ground, vide order (Ex.PZ) dated 08.07.2004. It is not disputed that the appellant also lodged FIR under Sections 406 and 498-A IPC against the respondent but lateron, she gave affidavit (Ex.PZ/2) for cancellation of the said criminal case. Even, while appearing in the witness-box, she admitted that the said FIR was lateron cancelled, at one point of time.

The appellant is living separately from her husband since September, 1999, and thereafter, she never turned up to live with the respondent. In 2001, she entered into compromise with her husband and also received Rs.2,50,000/- for settlement of all her claims from him, vide compromise deed (Ex.P1) and consequently, joint petition under Section 13-B of the HMA was filed by the parties but lateron, appellant withdrew her consent. So, it could be easily inferred that the appellant-wife deserted the respondent and caused cruelty to him. In this context, reliance has been placed on **Radha Shyam Saraf v. Smt. Mamta Saraf, 2005(29) R.C.R.(Civil) 887, (Chhattisgarh)**, wherein, wife received Rs.1,00,000/-

for her maintenance and joint petition under Section 13-B of the HMA on the ground of mutual consent was filed by the husband and wife. However, lateron, the wife withdrew her consent resulting in dismissal of the said petition and thereafter, the husband filed divorce petition on the ground of cruelty and desertion, which was allowed by the Hon'ble High Court in the appeal.

In view of the above discussion, the present appeal is devoid of merits and is hereby dismissed. However, the parties are left to bear their own costs.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

20.12.2019
adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No