

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

**FAO-M-127-2008 (O&M)
Decided on : 16.11.2019**

Kulwant Kaur

... Appellant(s)

Versus

Harinder Singh

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Argued by: Mr. Arun Abrol, Advocate
for the appellant(s).

Mr. Vipin Mahajan, Advocate
for the respondent(s).

Ms. Rekha, Advocate for
Mr. G.P.S. Bal, Advocate.

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the wife – Kulwant Kaur, impugning the judgment and decree dated 20th February, 2008, passed by the Ld. Addl. District Judge, Gurdaspur (hereinafter referred to as 'Ld. Court below'), vide which the petition filed by the respondent-husband/Harinder Singh, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was allowed and the marriage between the parties was dissolved on the grounds of cruelty and desertion.

A few facts necessary for adjudication of the instant appeal, as pleaded in the petition filed by the respondent-husband (petitioner therein) before the Ld. Court below, may be noticed.

The marriage between the parties was solemnized on 18th January, 1992, as per Sikh rites at Village Bhattian. One son was born out of

the said wedlock on 02nd November, 1992, who is in the custody of the respondent-husband (father). The marriage between the parties was a simple affair. The relations between the parties started turning sour soon after the marriage, as the behaviour of the wife was extremely unbecoming of a spouse. The wife deserted the matrimonial home on 01.08.1993 leaving behind their infant child with the husband. The relations between the parties kept deteriorating thereafter. The wife instituted a number of criminal cases against the husband and his family, besides filing complaints on false and frivolous grounds against the husband and his family before the Women's Cell, Gurdaspur. Not only this, numerous applications were made to the police authorities levelling allegations, which were found to be false by the police. She also got published a news item in the local newspaper, which caused a lot of humiliation to the husband and his family. Ever since, 01.08.1993, there had been no conjugal relations between the parties. Hence, in the above given circumstances, the husband prayed for dissolution of his marriage by way of decree of divorce.

Per contra, the appellant-wife (respondent therein) categorically refuted and denied the allegations of the husband, in her written statement filed before the Ld. Court below. She claimed that the husband and his parents had been treating her with cruelty. She had always been ready and willing to return to her matrimonial home. Besides levelling certain other objections qua the maintainability of the petition filed by the husband before the court below, she prayed for dismissal of the same.

In response to this, the husband filed a replication wherein, he controverted the submissions of the wife and reiterated his averments made in the petition.

From the pleadings of the parties, the following issues were framed by the Ld. Court below:-

- “1. *Whether the respondent treated the petitioner with cruelty and deserted the petitioner ? OPP*
2. *Whether the petition is barred by the principle of res judicata ? OPR*
3. *Whether the petitioner has not come to the court with clean hands ? OPR*
4. *Whether the petitioner is time barred ? OPR*
5. *Whether the respondent is entitled to special costs under section 35-A of CPC ? OPR*
6. *Relief.”*

Both the parties adduced evidence in support of their respective cases before the Ld. Court below. The husband examined himself as AW-1, besides, examining 06 other witnesses in support of his case and also tendered into evidence certain relevant documents. Thereafter, he closed his evidence. On the other hand, the wife did not produce any witness in support of her case.

After analyzing the evidence as well as the material on record, the Ld. Court below allowed the petition filed by the husband on grounds of cruelty and desertion.

We have heard learned counsel for the parties and have reappraised the evidence and other material on record.

During the pendency of the instant appeal, the parties were referred to the Lok Adalat of this Court, but the same proved to be a futile

exercise, as the parties failed to reconcile their differences.

On reappraisal of the evidence and other material on record, we are of the opinion that the impugned judgment does not warrant any interference on merits, as the same is a well reasoned one and impeccable. However, it is very apparent that the parties, who have been living apart since 1993 i.e. almost 26 years, are not willing to relent due to their temperamental incompatibility. Further, as per the admitted case of both the parties there has been no conjugal relationship between them for almost 26 years. Hence, it would not be wrong to presume that their marriage has broken down beyond repair. In the facts and circumstances, it is inconceivable due to the extreme bitterness which continues to exist between the parties that there could be a possibility of them living together ever again. During the course of hearing before us, all efforts made by this Court to bring about an amicable settlement between the parties proved futile and came to a naught, as the parties reiterated their earlier versions and maintained their respective stands, as taken before the Ld. Court below. Learned counsel for the appellant-wife on her instructions stated that in case a reasonable amount is offered as permanent alimony to her by the respondent-husband, she would accept the same and not press the instant appeal.

An affidavit thereafter was filed on 06.11.2019 by the respondent-husband, wherein, he undertook to pay a sum of ₹ 25.00 lakhs to the appellant-wife, as permanent alimony towards full and final settlement. Learned counsel for the appellant-wife on instructions from her submitted that the proposal of the respondent-husband made in his affidavit was acceptable to her.

As a sequel to the above discussion, the instant appeal is dismissed and the impugned judgment and decree dated 20th February, 2008 of the Ld. Court below is upheld. It is, however, made clear that respondent-husband shall adhere to the terms & conditions of the affidavit, which already stands taken on record and remain bound by his statement made in Court. He will pay the aforesaid amount i.e. ₹ 25.00 lakhs to the appellant-wife on account of permanent alimony towards full and final payment, within a period of three months from the date of passing of this order.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

November 16, 2019

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No