

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

FAO-M-226-2008

Decided on : July 31, 2019

Amar Nath Gill

..... Appellant

Versus

Poonam

..... Respondent

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

Argued by : Mr. Varun Mittal, Advocate for
Mr. Anshul Sharma, Advocate for
Mr. V.M.Gupta, Advocate
for the appellant.

Mr. Akshay Jain, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the appellant-husband – Amar Nath Gill against the judgment and decree dated 23.07.2008 vide which the petition filed by the respondent-wife under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act') was allowed by the trial Court.

2. Few facts necessary for adjudication of the instant appeal as narrated in the petition before the learned Court below may be noticed. The marriage between the parties was solemnized on 01.05.2002 as per Hindu rites and ceremonies at Shimla. This was the second marriage of both the parties. After the marriage, the appellant-husband and the respondent-wife lived and cohabited together at Shimla, then Kalka and lastly again at Shimla. No child was born out of the said wedlock. The appellant-husband

had a married daughter and a handicapped son from his earlier marriage while the respondent-wife had a son from her first marriage, who after her divorce remained in her custody.

3. As per averments made by the respondent-wife in her petition filed under Section 9 of the Act, the appellant-husband was 54 years of age at the time of marriage and the responsibility of his handicapped son had been taken over by his married daughter. Further, at the time of their marriage, the appellant-husband did not object to keep the minor son of the respondent-wife, who was aged 7 years at that time. He was also not averse to the wife completing her JBT training which she was undergoing at that time so that she could take up a suitable job later on. It was on this assurance given to the respondent-wife that the marriage was solemnized between them. Since the respondent-wife was still studying at the time of marriage, she resumed her studies, after staying for 10 days with the appellant-husband at Shimla. As per the respondent-wife, the parties along with the children i.e. handicapped son of the husband and her son from the previous marriage started residing at Kalka and on completion of her training in March, 2003, the parties shifted back to Shimla where she showered love and affection on both the appellant-husband and the handicapped son. There was a marked improvement in the health of the handicapped son. However, the handicapped son indulged in inappropriate behaviour towards the respondent-wife, which was brought to the notice of the appellant-husband but it boomeranged as thereafter he started subjecting the respondent-wife to maltreatment. In the second week of July, 2004 the

mother of the respondent-wife along with some relatives visited her matrimonial home and requested the appellant-husband to counsel the handicapped son but the appellant-husband forced the respondent-wife to leave the matrimonial home with her mother. After a fortnight, the appellant-husband came to the house of the mother of the respondent-wife and assured them that he would treat the respondent-wife well. The respondent-wife, on this assurance, accompanied him back to Shimla. In December, 2004, the respondent-wife got a job as a teacher in a government school in District Panchkula to which the appellant-husband had no objection. The respondent-wife would visit her matrimonial home over the weekends. However, subsequently the appellant-husband started compelling her to quit her government job and would maltreat her as a result of which she was left with no other option but to lodge a complaint with the police in May, 2005. The matter was however, compromised between the parties but the same was short lived as the appellant-husband again started pressurizing her to resign from her job, which led to her also being beaten up by the appellant-husband on 17.06.2005. Under these compelling circumstances, she came to her mother's house along with her son. Even though the respondent-wife made earnest efforts to join the company of her husband at Shimla but the same met with no success. She contended that despite discharging her matrimonial duties and obligations, the appellant-husband refused to take her back without any just and sufficient cause.

4. Per contra, the appellant-husband in his written statement filed

before the Court below refuted and denied all the allegations made by the respondent-wife. He submitted that in fact when the marriage proposal was sent to him, the mother of the respondent-wife had told him that her daughter i.e. respondent-wife, who was pursuing her JBT course would prefer to be a housewife after her marriage. Since he was looking for a housewife, who could take care of him and his handicapped son, he agreed to marry the respondent-wife. He denied that he had agreed to the marriage on the assurance that he would let the respondent-wife work after marriage. He claimed that on the asking of his wife he made her nominee in his GPF account. He alleged that the respondent-wife also asked him to deposit a sum of Rs.5 lakhs in her name in a bank. On his refusal to deposit the same, she was reluctant to return to Shimla and returned only on completion of her JBT training in March, 2003 and stayed in the matrimonial home till December, 2004. During this time, she would frequently visit the house of her mother in Panchkula and her son from the first marriage would stay back with him. The appellant-husband emphatically denied that his handicapped son would make inappropriate advances towards the respondent-wife. On the contrary, he alleged that the respondent-wife would maltreat and beat up his handicapped son as well as use derogatory language. He denied that he had forced the respondent-wife to leave the matrimonial home and submitted that she had in fact left the matrimonial home on 10.12.2004 in his absence along with all her jewellery and clothes without even bothering to inform the appellant-husband. He further submitted that on coming to know that she had taken up a job in a

government school, the appellant-husband immediately asked her to return but she refused to leave her job. Thereafter no cohabitation took place between the parties. He claimed that the intentions of the respondent-wife from the very beginning was only to grab money and property of the appellant-husband.

5. On the pleadings of the parties, following issues were framed by the learned trial Court:

1. Whether the respondent has withdrawn from the society of the petitioner without reasonable cause? OPP
2. Relief.

6. Both the parties adduced evidence in support of their case. The respondent-wife herself stepped into the witness box as PW-1. She examined her mother Kanta Devi as PW-2 and Kiran Devi as PW-3. On the other hand, appellant-husband himself stepped into the witness box as RW-4 and examined five other witnesses.

6. After analyzing the evidence led by the parties as also the other material available on record, the trial Court allowed the petition filed by the respondent-wife.

7. We have heard learned counsel for the parties and perused the evidence as well as other material available on record.

8. During the pendency of the instant appeal, the parties were referred to Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement, however, it failed to yield any positive result.

9. Learned counsel for the parties while addressing arguments stuck to their respective stands and reiterated their submissions made before the trial Court.

10. It is the admitted case that at the time of marriage, the respondent-wife was studying and undergoing JBT training at Kalka. It would be pertinent to mention that when the respondent-wife applied for the job of a teacher in the government school, it was the appellant-husband himself, who attested the documents for the said application. The story put forth by the appellant-husband that he attested the documents as he was misled by the respondent-wife that they were for the purpose of taking admission in BA-I is hard to digest. The appellant-husband, who is an educated man could not have been duped into attesting documents, which were meant for employment.

11. Secondly, it is also a matter of record that the son of the respondent-wife from her first marriage got admission in a school in Shimla and studied there for two years. RW-1 Babita, estranged sister-in-law of the respondent-wife, appeared in the witness box and for obvious reasons tried to support the case of the appellant-husband but not before admitting that the respondent-wife had resided at Shimla with the appellant-husband for two years after leaving Kalka. This circumstance coupled with the fact of her son studying in a school in Shimla goes a long way in inferring that the respondent-wife wanted to continue staying in her matrimonial home and that she had not married the appellant-husband for property and money.

12. Coming to the allegation of the respondent-wife pressurizing

the appellant-husband to enter her name as nominee in the GPF account, no cogent evidence was adduced by the appellant-husband, which could reveal coercion or undue influence in nominating her as a nominee in the GPF account. She was made a nominee within a fortnight of their marriage and even thereafter as already discussed above, they lived together for two years. Hence, a presumption can safely be drawn that she had been nominated in the GPF account voluntarily by the appellant-husband without pressure from any quarter.

13. The allegations of the appellant-husband qua the maltreatment meted out to him by the respondent-wife are not only vague but unbelievable. No doubt, Pankaj Sharma stepped into the witness box as RW-5 and deposed that the respondent-wife would beat up the handicapped son, but this on the face of it is an after thought as no such specific averments were made in the written statement of the appellant-husband. The deposition of RW-5 Pankaj Sharma is clearly beyond pleadings.

14. In fact it is very evident that the appellant-husband is unwilling to accept the respondent-wife back in the matrimonial home as she is pursuing her job at Ambala. It is an admitted case that he made a statement before the Women's Cell that he was willing to take her back provided she left her job. It can be safely inferred that it is the appellant and appellant alone, who has thrown out the respondent-wife along with her son from the matrimonial home and withdrawn from the society of the respondent-wife without any just and sufficient cause.

15. As a sequel to the above discussion, we are of the considered

view that no interference is warranted in the impugned judgment passed by the Court below as the same is a well reasoned one. Accordingly, the appeal is dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 31, 2019
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Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No