

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

FAO-M-174-2010 (O&M)
Decided on : July 16, 2019

Harbans Singh

..... Appellant

Versus

Jaswinder Kaur

..... Respondent

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

Present : Mr. Akshit Aggarwal, Advocate for
Mr. S.K.Singla, Advocate
for the appellant.

None for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the appellant-husband – Harbans Singh against the judgment and decree dated 18.03.2010 vide which the petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') was dismissed by the trial Court.

2. Few facts necessary for adjudication of the instant appeal as narrated in the petition filed by the appellant-husband before the learned Court below may be noticed. Marriage between the parties was solemnized on 24.05.1987 at village Daliey Wala, District Mansa as per Sikh religious rites and ceremonies. Parties lived and cohabited together as husband and wife at Talwandi Sabo. A daughter and a son were born to them out of the said wedlock. Their son unfortunately died on 24.07.2006. It was alleged

by the appellant-husband that the conduct of the respondent-wife was indifferent towards him and his family right from the beginning of their marriage as she was a short tempered person, who would use abusive language against him and his parents. She would often visit the house of her maternal uncle without his permission. In spite of her unbecoming behaviour, the husband showered her with love and affection. In the year 2005, she left the house of the appellant-husband after quarreling with him and while going away she took away all her jewellery and valuables. The appellant-husband alleged that the respondent-wife would not only treat him cruelly but would also threaten to commit suicide and implicate him and his family in false cases. He further alleged that she did not even bother to come to her matrimonial home when her son died in the year 2006. In fact the appellant-husband had made earnest efforts to bring her back to the matrimonial home and had also sought the help of panchayat in that regard but it proved to be a futile exercise.

3. Per contra, the respondent-wife while filing her written statement before the Court below categorically denied the averments and allegations levelled against her by the appellant-husband. She submitted that it was the appellant-husband and his family, who had in fact been maltreating her right from the beginning of their marriage as they were dissatisfied with the dowry which she had received from her parents at the time of their marriage. She alleged that even though a huge amount had been spent on her marriage by her parents and she had been given sufficient dowry yet her husband and his family would continuously raise demands of more dowry for which she would be often subjected to physical assault. She

submitted that her parents gave a lot of gifts including gold ornaments and cash at the time of birth of the children. While denying that she had left the matrimonial home after fighting with the appellant-husband, she submitted that in fact it was the appellant-husband, who had turned her out after subjecting her to merciless beatings soon after the death of her son as he blamed her for his death on account of kidney failure by alleging that she had passed on the said disease to the son. She pleaded that after being turned out of the matrimonial home by the appellant-husband, she along with her father went to the appellant-husband in October, 2006 with a request to keep and maintain her but he refused to do the same. Even thereafter in November, 2006 another effort was made through a panchayat comprising of her brother and others with a request to the appellant-husband to rehabilitate the respondent-wife in the matrimonial home but the appellant-husband not only refused by repeating the same story of their son having died because of inheriting kidney disease from her but did not even hesitate to declare that he would contract a second marriage.

4. After the pleadings of the parties, following issues were framed by the learned trial Court:

1. Whether the respondent has treated the petitioner with cruelty as alleged. If so, its effect? OPP
2. Whether respondent deserted the petitioner for more than 2½ years preceding presentation of petition than 2½ years, preceding presentation of petition without any sufficient cause. If so, its effect? OPP
3. Whether petitioner has concealed material facts. If so,

its effect? OPP

4. Relief.

5. In order to prove the case, the appellant-husband himself stepped into the witness box as PW-5 and examined four other witnesses. The respondent-wife stepped into the witness box as RW-5 and examined four other witnesses.

6. After analyzing the evidence led by the parties as also the other material available on record, the trial Court dismissed the petition by observing that no cogent evidence had been brought forth by the appellant-husband to prove that he had been treated with cruelty and desertion as required under Section 13 of the Act.

7. We have heard learned counsel for the appellant 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 appellant-husband while addressing arguments stuck to his stand and reiterated the submissions made before the trial Court.

10. On reappraisal of evidence on record one fact which emerges loud and clear is that it was the appellant-husband, who had in fact been subjecting the wife to cruelty and torture. His callous behaviour of turning her out of the matrimonial home soon after the bhog ceremony of her son by blaming her for his death, are indicative of his disgustingly cruel behaviour

towards the respondent-wife, who would have at that time naturally been in mourning. The appellant-husband could not by any cogent or reliable evidence establish that the conduct of the respondent-wife was so grave, which would have caused him immeasurable pain or such that could be said to endanger his life. The appellant-husband has on the face of it not come with clean hands. On one hand, he has alleged that the respondent-wife left her matrimonial home in the year 2004 but a perusal of photographs Exs.R-1 and R-2 taken at the time of a wedding in the year 2005 show both of them posing together. The appellant-husband himself has admitted to these photographs being authentic and correct. If these photographs were actually taken in the year 2005, then the allegations of the appellant-husband that the respondent-wife left her matrimonial home in 2004 falls flat in the face. It is the appellant-husband and appellant-husband alone, who on the face of it, is guilty of inflicting immeasurable cruelty and agony on the respondent-wife. Further, it is his own admitted case that he did not invite his wife at the time of marriage of their daughter. Though as many as four witnesses were examined by the appellant-husband but nothing could be elicited from any of them in favour of the appellant-husband. The alleged acts of cruelty on the part of the respondent-wife cannot by any stretch of imagination be said to be so grave for which he could be held entitled to a decree of divorce.

11. As far as second issue qua desertion is concerned, as already noticed above, there is enough clinching evidence on record to establish that the respondent-wife was in fact very much living in her matrimonial home till August 2006. The allegation of the appellant-husband that she deserted him in the year 2004 without any sufficient cause deserves to be rejected

outrightly. A perusal of the testimonies of PW-1 Jit Singh and PW-2 Charanjit Kaur (sister of the appellant-husband) coupled with photographs Ex.R1 and R2 leave no manner of doubt that the respondent-wife lived in her matrimonial home till August, 2006. Hence, the factum of the respondent-wife deserting the appellant-husband for a period of 2 years or more from the presentation of the petition under Section 13 of the Act does not stand proved.

12. As a sequel to the above discussion, we have no hesitation in drawing an inference that it is the respondent-wife, who is the wronged party. We do not find any perversity in the impugned order passed by learned Court below as the same is a well reasoned one.

13. Accordingly, the instant appeal being devoid of merit, is dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 16,2019
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Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No