

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

**FAO-M-224-2010 (O&M)
Decided on : 04.07.2019**

Gayatri

... Appellant(s)

Versus

Madan Mohan

... Respondent(s)

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

PRESENT: Mr. S.R. Hooda, Advocate
for the appellant(s).

Mr. Chanderhas Yadav, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

This appeal has been preferred by the appellant – Gayatri, against the impugned judgment and decree dated 07th May, 2010, passed by the Ld. District Judge, Sonapat (in short 'Ld. Court below'), vide which the petition filed by the respondent- Madan Mohan (husband) under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for dissolution of marriage with the appellant on the twin grounds of cruelty and desertion stands allowed.

In the instant case, the following issues were formulated by the Ld. Court below:-

- “1. *Whether the respondent had treated the petitioner with such degree of cruelty as would amount to a matrimonial offence and the marriage had irretrievably failed ? OPP*
2. *Whether there had been reasonable excuse for the respondent to withdraw from the society of her spouse ? OPR*
3. *Relief.”*

The respondent-husband examined as many as three witnesses which included his father PW-1 Balwan Singh and he himself appeared as PW-3. On the other hand, the appellant-wife stepped into the witness-box as RW-1 along with

her brother, who appeared as RW-2. After taking into consideration the evidence on record, the petition under Section 13 of the Act was allowed on the ground that the marriage which was solemnized between the parties as per the Hindu rites and ceremonies on June 21, 2002 at Gohana be dissolved on the grounds of cruelty and desertion. It was however, ordered that the appellant-husband would be liable to pay permanent alimony of ₹ 3,50,000/- to the appellant-wife.

Learned counsel for the appellant submits that the Ld. Court below while allowing the divorce petition under Section 13 of the Act, filed by the respondent-husband, failed to take into account that the allegations of cruelty and desertion could not be proved against the appellant-wife. He urged that the allegations of the respondent-husband *qua* the cruelty inflicted upon him by the appellant-wife were totally vague and did not find support from any corroborative evidence. He further urged that in fact, it was the appellant-wife, who had been at the receiving end at the hands of the respondent-husband and his family, but despite that she made all earnest efforts to adjust in her matrimonial home. Lastly, it was urged that the nuptial ties between the parties had not broken down to such an extent that the relations between them could not be repaired and there were still chances of parties arriving at a reconciliation which could salvage their marriage.

Per contra, learned counsel for the respondent-husband submitted that the marriage had in fact completely failed and the appellant-wife had been continuously treating the respondent-husband with cruelty. She had withdrawn from the society of the respondent-husband without any justifiable cause. It was also submitted that not only was the appellant-wife arrogant and hostile in her behaviour towards the respondent-husband and his family but would not even hesitate to inflict insults on him in the presence of one and all. So much so, she had been associating herself with antisocial elements and on one particular day, had

of his family had to be medically treated. Thereafter, as per the learned counsel for the respondent-husband, the appellant-wife had clandestinely slipped out of her matrimonial home on the morning of 1st January, 2003 along with valuables and costly clothes without even informing the respondent-husband or any other member of his family. She was, however, later on discovered by the respondent-husband at her parental home. Despite the earnest efforts of the respondent-husband as well as his family, the appellant-wife refused to return to her matrimonial home. Learned counsel for the respondent-husband also drew the attention of this Court to the fact that in order to save the marriage, he filed a petition under Section 9 of the Act for Restitution of Conjugal Rights on October 09, 2003, despite that the appellant-wife refused to join his society. Rather, she got registered criminal cases against the respondent-husband and his family under Sections 498-A and 406 of the Indian Penal Code (IPC). Further, on the birth of a baby boy on June 25, 2003 at her parental home, neither the appellant-wife nor the members of her family bothered to inform the respondent-husband about the same. Later on, on coming to know about the birth of the baby boy, when the respondent-husband and his family visited the parental home of the appellant-wife to see the baby boy, they were not even permitted to do so.

We have heard learned counsel for the parties and also gone through the evidence and other material on record. A perusal of the same indicates that the appellant-wife indeed withdrew from the society of the respondent-husband in the year 2003. Though the stand of both the parties *qua* the reasons for withdrawing from the society of the respondent-husband is at variance with each other, but one fact which stands established is that the appellant-wife never returned to her matrimonial home to join the company of the respondent-husband after April, 2003 and the petition under Section 13 of the Act was filed by the respondent-

of the appellant-wife from the society of her husband. It will also be relevant to refer to the testimony of PW-1 Balwan Singh i.e. father of the respondent-husband and PW-2 Hari Singh, Lamberdar of the Village and PW-3 the respondent-husband himself, which reveals that the respondent-husband and his family had made innumerable, persistent and earnest efforts to facilitate the return of the appellant-wife to her matrimonial home, but without any success. Appellant-wife while stepping into the witness-box as RW-1 testified that she had stayed with the respondent-husband for a period of six months only, but she had been treated with cruelty by him and his family during that time. In fact, the appellant-wife in unambiguous terms stated that she was not willing to return to her husband at any cost. It would be relevant to notice that during the pendency of the instant appeal, the parties were referred to the Mediation and Conciliation Centre of this Court, but all efforts ended in a stalemate.

Taking into consideration the totality of circumstances, we are of the opinion that the judgment and decree dated 07th May, 2010, passed by the Ld. District Judge, Sonapat, does not warrant any interference and hence the instant appeal deserves to be dismissed. However, taking into consideration the fact that a minor child is living in the custody of the appellant-wife, we feel it would be just and appropriate to enhance the permanent alimony from ₹ 3,50,000/- to ₹ 5,00,000/-, which would be paid within a period of two months from the date of passing of this order.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 04, 2019

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*