

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

**FAO-M-185-2012 (O&M)
Decided on : 04.07.2019**

Sukhwinder Singh

... Appellant(s)

Versus

Daljit Kaur

... Respondent(s)

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

PRESENT: Mr. Parminder Singh-I, Advocate
for the appellant(s).

Ms. Harleen kaur, Advocate for
Mr. G.S. Punia, Advocate, for the respondent(s).

MANJARI NEHRU KAUL, J.

Instant appeal has been preferred by the appellant – Sukhwinder Singh against the judgment and decree dated 10th February, 2012, passed by the Ld. District Judge, Sangrur, (in short 'Ld. Court below') vide which his petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') against the respondent/wife – Daljit Kaur was dismissed.

In his petition before the Ld. Court below, it was pleaded by the appellant-husband (petitioner therein) that he got married to respondent – Daljit Kaur on 12.03.1989 as per Sikh rites and ceremonies. The parties lived and cohabited together as husband and wife at Sangrur, wherein the marriage was duly consummated and two children, one son and one daughter were born out of the said wedlock. The respondent not only started pressurizing the appellant to live separately from his parents but she refused to perform her matrimonial duties as well. Further, it was alleged by the appellant-husband that the respondent-wife would often pick up quarrels and misbehave with both him and his parents to such

an extent that she threatened to commit suicide many a times and implicate them in false criminal cases. As per the appellant, the respondent left the matrimonial home on 03.07.2004 along with all the valuables and without his consent. The appellant with a view to bring the respondent back into the conjugal fold made efforts through a Panchayat, but in vain. It was submitted in the petition that the respondent did not even care to come to see her ailing son, who was operated upon for some stomach problem.

Per contra, in her written statement, respondent-wife refuted and emphatically denied all the allegations of the appellant. Rather, she submitted that she resided with the appellant till May, 2008 and never shirked from performing her matrimonial duties including taking care of her ailing mother-in-law when the latter was hospitalized. She alleged that in fact, the appellant and his parents had been maltreating and physically assaulting her ever since her marriage. Many a times she was turned out of her matrimonial home with demands to bring more dowry from her parents. Respondent pleaded that it was in fact the appellant, who had abandoned her in May, 2008, at the house of her sister on the pretext of going to the house of her other sister at Sirhind. To her dismay, when the appellant did not return, the respondent went to her parental home and from there she reached her matrimonial home on her own, where, she was physically assaulted by the appellant and forced to leave the matrimonial home. Hence, it was, under these circumstances, she had been compelled to live in her parental home ever since then. It was also pleaded by her that she was still willing to live with the appellant, but it was the appellant himself who was not ready to keep her with him.

In the present case, the following issues were framed by the Ld. Court below:-

- “1. *Whether the respondent treated the petitioner with cruelty after solemnization of marriage of the parties ? OPP*

2. *Whether the respondent had withdrawn from society of the petitioner for a continuous period of two years immediately preceding filing of the petition, without any reasonable excuse ? OPP*
3. *Relief.”*

The appellant examined as many as five witnesses and himself stepped into the witness-box. On the other hand, respondent too stepped into the witness-box as RW-2 along with her nephew who was examined as RW-1.

Ld. Court below after taking into consideration the evidence on record, dismissed the petition under Section 13 of the Act by holding that the allegations of cruelty and desertion remained un-substantiated against the respondent-wife.

We have heard learned counsel for the parties and also gone through the evidence and other material on record.

It may be noticed that the parties during the arguments have reiterated their earlier version and stuck to their respective stand as taken before the Ld. Court below.

In the case in hand, the appellant is seeking the dissolution of his marriage under Section 13 (1) (ia) & (ib) of the Act by alleging mental cruelty and desertion on the part of the respondent-wife.

We are of the view that there is no infirmity and illegality in the impugned judgment and decree passed by the Ld. Court below. The Court would have to be satisfied that the relations between the parties had soured and deteriorated to such an extent due to the conduct of one of the spouse making it impossible for them to live together as man and wife without inflicting immeasurable mental agony, torture or distress. Needless to say, to substantiate

the allegations of having been caused mental cruelty, it would have to be seen

whether the same persisted continuously or over a period of time so as to make it intolerable and unbearable for the appellant to live together with the respondent or on the other hand, the conduct of the respondent-wife was one of those few isolated instances spanning over a period of time involving the usual and normal quarrels between the spouses over minor and trivial issues. A perusal of the submissions and allegations, which have been levelled by the appellant against the respondent-wife *qua* the mental cruelty caused to him cannot be by any stretch of imagination be said to cause such acute distress to him, leaving him with no other option but to end his nuptial ties with her. Making certain statements or expressing displeasure over some family decisions or at times reacting discourteously or disrespectfully on the spur of moment cannot be said to be a ground of mental cruelty. Moreover, the fact that two children were born out of the said wedlock in the years 1992 & 1994 belies the allegations of the appellant that the respondent-wife had been inflicting mental cruelty on him soon after their marriage.

A perusal of all the allegations *qua* cruelty levelled by the appellant against the respondent-wife are on the face of it completely vague and amount to nothing more than the normal wear and tear of a married life.

Coming to the next issue of the respondent-wife having deserted the appellant-husband, the same too, is devoid of any merit. Section 13(1)(ib) of the Act reads thus:-

“13. Divorce- (1) *Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-*

(i) *has, after the solemnization of the marriage had voluntary sexual intercourse with any person other*

than his or her spouse; or

(ia) xx xxx xx xxx

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

xx xxx xx xxx

xx xxx xx xxx

Explanation.- In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expression shall be construed accordingly."

“Desertion” would imply a total repudiation of marital obligation. A plain reading of the aforementioned Section 13(1)(ib) of the Act reveals that to constitute desertion, two ingredients must co-exist with regard to the deserted spouse i.e.;

- (i) without any reasonable cause,
- (ii) without the consent of the other party or against his/her wishes.

The question of legal desertion cannot be established merely by pointing fingers at the spouse who would have left the matrimonial home. If it is shown that there was cruelty on the part of the husband and the wife was left with no other option but to stay away from the matrimonial home, it would not constitute legal desertion. On the contrary, it would be treated as desertion by the husband on account of whose conduct the wife had been driven out. The instant case is no different. It may be worthwhile to notice that during the pendency of the instant appeal the parties were referred to the Mediation and Conciliation Centre of this Court, for enabling them to explore the possibility of an amicable

settlement, but the same proved to be a futile exercise.

On a perusal of the evidence and other material on record, it can be safely inferred that in fact it is the respondent-wife, who has been deserted by the appellant ever since she was left in May, 2008 at her sister's home. She had since then been making all efforts to join the company of the appellant-husband, but it was the appellant-husband alone, who was guilty of matrimonial misconduct and had been intentionally not making the atmosphere conducive to facilitate the return of the respondent-wife to her matrimonial home.

In the light of above, we do not find any ground, which would warrant interference of this Court through the present appeal. Accordingly, the instant appeal is dismissed and the judgment and decree dated 10th February, 2012 of the Ld. Court below are upheld.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 04, 2019

J.Ram

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