

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

**FAO-M-36-2012 (O&M)
Decided on : 26.07.2019**

Kuldeep Kaur @ Paramjit Kaur

... Appellant(s)

Versus

Gurmeet Singh

... Respondent(s)

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

PRESENT: Mr. Dinesh Kumar, Advocate
for the appellant(s).

Mr. Sagar Aggarwal, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The appellant-wife has challenged the impugned judgment and decree dated 07.11.2011, passed by the Ld. Addl. Distirct Judge, Sangrur (in short 'Ld. Court below'), whereby, the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was allowed on the ground of desertion.

A few facts necessary for adjudication of the case, as narrated in the petition filed by the respondent-husband before the Ld. Court below, may be noticed. Marriage between the parties was solemnized on 20th February, 2001, according to Sikh rites and ceremonies at Village Neelowal. After the marriage, the parties resided and cohabited together at Village Moranwali and out of the wedlock a male child was born to the parties on 18.10.2002. It had been averred in the petition by the respondent-husband, the appellant-wife was short tempered, who would at the drop of a hat pickup quarrels on petty and trivial issues leading

to a complete turmoil and unrest in the marital life of the parties, which in turn spoilt the entire atmosphere at home. The respondent-husband made earnest efforts to make his marriage with the appellant-wife work by repeatedly pleading with her and counselling her to reform herself but the same fell on deaf ears. She would always find fault with him and would frequently leave her matrimonial home without his consent as and when called by her elder sister Harjeet Kaur's husband namely Amarjeet Singh, who wielded considerable influence on her and her side of the family. As the respondent-wife had been neglecting her matrimonial obligations it led to a lot of acrimony between the spouses and allegedly it had all been happening at the behest of the respondent-wife's brother-in-law i.e. Amarjeet Singh. The mother of the appellant-wife was also taken into confidence and apprised about the un-becoming behaviour of the appellant-wife, but it proved to be of no avail. On 07.03.2006, the appellant-wife withdrew from the society of the respondent-husband without any sufficient and reasonable cause and while leaving her matrimonial home threatened the respondent-husband and his family of dire consequences. Despite all this, the respondent-husband yet again made earnest efforts by taking the help of a Panchayat on 05.10.2006, comprising of respectables from both the sides to persuade the appellant-wife to return to her matrimonial home, but it proved to be a futile exercise. After filing a suit for permanent injunction on 22.03.2006 and a complaint under Section 97 Cr.P.C., the appellant-wife agreed in writing at a Panchayat convened on 05.10.2006 to divorce the respondent-husband for which an amount of ₹ 2.4 lakh was given to her as lump-sum maintenance for herself and the minor son. Since the Panchayati divorce did not have legal sanctity, the respondent-husband filed a petition under section 13 of the Act before the

Trial Court.

Per contra, in the written statement filed by the appellant-wife (respondent therein), she refuted and denied all the allegations levelled against her by the respondent-husband. As per her submissions, she was inflicted both mental and physical cruelty by the respondent-husband from the very beginning of her marriage. She was being forced and pressurized to ask for 1/3rd of her share of land from her mother. As she refused to accede to the demands of her greedy respondent-husband, she was physically assaulted and maltreated by the respondent-husband and his mother to the extent of being thrown out of her matrimonial home in just her wearing apparels by snatching her infant child from her after being threatened that she would have to face dire consequences, in case, she dared to return to her matrimonial home, without getting the transfer of the land effected in her name. As per her, it was only with the intervention of the Court that the custody of her infant child was restored to her. She completely denied the factum of the Panchayati divorce dated 05.10.2006 having been arrived at and also denied having any ever received an amount of ₹ 2.4 lakh from the respondent-husband.

Replication to the written statement was also filed by the respondent-husband and the contentions to the contrary in the written statement were denied being wrong and the contentions in his petition were reiterated by the respondent.

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

- “1. *Whether the petitioner is entitled to decree of divorce on the grounds as alleged in the petition ? OPP*
2. *Relief.*”

The appellant-wife examined two witnesses and herself stepped into

the witness-box as RW-2 and tendered her affidavit as Ex.R-1. On the other hand, respondent-husband too stepped into the witness-box as PW-5 and examined as many as six witnesses including PW-1/Shashi Mohan, a Notary Public at Sunam, PW-2/Chamkaur Singh, former Sarpanch of Village Moranwali, PW-3/Gurmeet Singh, an another resident of Village Moranwali, PW-4/Labh Singh, father of the respondent-husband and PW-6/Darshan Singh.

Ld. Court below after taking into consideration the evidence on record, allowed the petition vide judgment and decree dated 07.11.2011 and the marriage was ordered to be dissolved between the parties on the ground of desertion subject to the payment of ₹ 2.00 lakh as permanent alimony.

The legality and validity of the impugned judgment and decree dated 07.11.2011 has been challenged in this appeal on the ground that the evidence *qua* the allegation of desertion was not appreciated by the Ld. Trial Court in the right perspective, especially, when the trial Court had recorded a finding that mental cruelty could not be proved against the appellant-wife and most importantly the essential ingredients to attract 'desertion' i.e. *animus deserendi* could not be proved in the facts and circumstances of the case, as the appellant-wife had been compelled to live in her parental house due to the cruel conduct of the respondent-husband himself. It was strenuously submitted that it was in fact the respondent-husband, who had deserted her and his behaviour towards the appellant had been very cruel leaving her with no option but to take refuge in her parental home. She submitted that being a God fearing lady, she was still willing to reside with the respondent-husband, if her security and that of her child could be assured.

We have heard learned counsel for the parties, perused the evidence and other material on record thoroughly.

It may be noticed that the parties during the course arguments have

reiterated their earlier version and stuck to their respective stand as taken before the Ld. Court below.

A bare reading of Section 13(1)(ia) & (ib) of the Act, makes it abundantly clear that “Desertion” would imply deliberate abandonment of one spouse by the other without the others consent and without any reasonable cause. In the case in hand, there has been no denial from the appellant-wife that Ex.P1 i.e. Panchayati divorce was not executed by her. In fact, she has admitted her signatures on the same though her stand is that she was pressurized to sign and her signatures were forcibly obtained. Undoubtedly, Ex.P1 cannot be accepted as a decree for divorce but the contents therein can certainly be taken into consideration. It is indeed strange and hard to digest that she was forced to sign on Ex.P1, as it is not only she who is a signatory but her mother namely Jaswant Kaur, uncle Hari Singh and three other persons from her side also are signatories to the said document. A perusal of the written statement filed by the appellant-wife before the Ld. Trial Court is absolutely silent *qua* the factum of her being made to forcibly sign Ex.P1. The least that could have been done by the appellant was to examine at least her mother, if not the other four signatories to Ex.P1, to prove the factum of her being forced to sign. The only submission in her written statement is that since the amount of ₹ 2.4 lakh, which was agreed to be paid to her, had not been paid, she was thus not bound by the agreement dated 05.10.2006. A perusal of the evidence led before the Ld. Court below, further reveals that no cross-examination was done on PW-1/Shashi Mohan, a Notary Public at Sunam and PW-2/Chamkaur Singh, former Sarpanch of Vilage Moranwali, *qua* this aspect of the matter.

On appraisal of the evidence and other material, there is no manner of

doubt that the appellant-wife intentionally withdrew from her matrimonial obligations without the consent of the respondent-husband and without any reasonable cause. It would be relevant to refer to the observations made by the Ld. Trial Court in the impugned judgment that during the pendency of the petition under Section 13 of the Act, an offer was made by the respondent-husband to take her back to her matrimonial home, but she refused to accept the same and declined to go back to join the company of the respondent-husband citing threat perception to her life. During the pendency of the instant appeal, the matter was referred to the Mediation and Conciliation Centre of this Court, but it failed to yield any result. It is thus evident that the appellant-wife on one pretext or the other has been declining to go back and join the company of the respondent-husband. It is very strange that though she has been declining to go back to her matrimonial home on account of threat perception to her life, but the same has not been substantiated by any iota of evidence, documentary or oral. The marriage between the parties was admittedly solemnized on 20th February, 2001, i.e. almost 18 years back. The parties have been living apart since 2006 i.e. 13 years. In the instant case, an inference of desertion will have to be drawn after taking into account the totality of the facts and circumstances of the case. We have no hesitation in holding that the appellant has withdrawn both from her matrimonial home as well as from the discharge of her obligations of marriage, which amounts to *animus deserendi* on her part. It may be worthwhile to mention that the son of the parties is living with the respondent-father and an interaction with the son, who is now about 17 years of age, revealed that he was willingly living with his father and being raised by him.

In the light of above, we do not find any ground, which would warrant

07.11.2011. Consequently, the instant appeal fails. However, we feel that it would be just and appropriate to enhance the permanent alimony from ₹ 2.00 lakh to ₹ 7.00 lakh, which would be paid by the respondent-husband to the appellant-wife within a period of two months from the date of receipt of copy of this order.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 26, 2019

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No