

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

**FAO-M-65-2012 (O&M)
Decided on : 31.07.2019**

Kamal Malhotra

... Appellant(s)

Versus

Monika Malhotra

... Respondent(s)

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

Argued by: Mr. Jaspal Singh Pannu, Advocate
for the appellant(s).

Mr. Matinder Brar, Advocate for
Mr. Amrinderpreet Singh, Advocate,
for the respondent(s).

MANJARI NEHRU KAUL, J.

Instant appeal has been preferred by the appellant/husband – Kamal Malhotra against the judgment and decree dated 14th December, 2011, passed by the Ld. Additional District Judge, Rewari (in short 'Ld. Court below') vide which his petition filed under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') against the respondent/wife – Monika Malhotra, was dismissed.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the appellant-husband before the Ld. Court below, may be noticed. The marriage between the parties was solemnized on 02.07.2001, as per Hindu rites and customs at Rewari. Out of the said wedlock one son was born on 11.04.2002, who is residing with the respondent-wife. It was alleged by the

appellant-husband that from the very beginning of their marriage, the behaviour of the respondent-wife was unreasonable and unaccommodating. There would be unnecessary interference from the family of the respondent-wife, who would insist on the appellant-husband to shift to her mother's house in Rewari. It was further alleged that the brother of the respondent-wife had criminal antecedents and would threaten the appellant-husband. Both the respondent-wife and her family would press him to render financial support to them. In order to pressurize him, the respondent-wife subjected the appellant-husband to continuous maltreatment and harassment. The appellant-husband alleged that many a times his wife would visit her parental house at Rewari, as a result of which their son remained absent from school for days together. It was also alleged that on several occasions, the respondent-wife sent money to her family without the knowledge and consent of the appellant-husband. It was further alleged that the mother of the respondent-wife was living with a man and leading an immoral life. Hence, he pleaded that her staying in the house under such circumstances was not conducive especially for their minor son. He alleged that on 08th August, 2006, the respondent-wife left the matrimonial home with their son without any reasonable cause and without even informing the appellant-husband. The appellant-husband visited the parental house of the respondent-wife, where she was not found. Later on, however, when the appellant-husband got in touch with her and asked her to return to the matrimonial home, as the studies of their son was getting affected, it fell on deaf ears. The respondent-wife, thereafter, returned to her matrimonial home only in the first week of November, 2006. However, there was no cohabitation between the parties. The respondent-wife did not even allow him to enter the bedroom. Due to the unbecoming behaviour of the respondent-wife, the relation between the appellant-husband and his own brother soured, as the

respondent-wife would pick up quarrels with him as well. The brother of the appellant-husband evicted him from his house as a result of which, he moved into the house of his mother, but the behaviour of the respondent-wife towards his mother was no different, as she continued with her cruel behaviour including extending threats of false implication in criminal cases. It was alleged that the respondent-wife would go missing at late hours and sometimes for months together without informing the appellant-husband. On 13th August, 2008, she finally left the matrimonial home with their son and took along all her jewellery, FDR's etc. without informing the appellant-husband.

Per contra, in her written statement, respondent-wife refuted and emphatically denied all the allegations of the appellant-husband. She, rather, alleged that soon after their marriage, both the appellant-husband and his mother had started harassing her and would often demand a car and cash from her parents. They would taunt her that since her parents had not solemnized her marriage as per their status, it had resulted in their humiliation in the society. The respondent-wife claimed that it was in fact, the appellant-husband and his mother, who had been subjecting her to ill-treatment. They would indulge in character assassination of her mother and her family besides subjecting her to physical and mental cruelty. She, in fact, alleged that on 13.08.2008, the appellant-husband had thrown her out of her matrimonial home along with their son. After that the respondent-wife had made a complaint to the authorities concerned against the behaviour meted out to her by the appellant-husband and his mother. The appellant-husband brought the wife back from her parental home at Rewari, after a written assurance before the police that he would keep her well and live with the appellant-wife as well as their son separately in a rented accommodation.

However, on 13.10.2008, when the respondent-wife and their son were being

taken by the appellant-husband on the pretext of shifting into a rented house at Madhu Vihar, Delhi, while on the way, he made them both get down from his motorcycle and fled away by telling the respondent-wife that he did not want to live with her and the son. Ever since then, the respondent-wife and the son had been living at Rewari at the mercy of her mother *qua* which a report too had been lodged on 07.11.2008 at Police Station Mandawali. Despite having been compelled to leave her matrimonial home, she still expressed her desire to join the company of the appellant-husband.

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

- “1. Whether the petitioner is entitled for a decree of divorce on the grounds as mentioned in the petition ? OPP*
- 2. Whether present petition is not maintainable ? OPP*
- 3. Relief.”*

The appellant-husband examined six witnesses and himself stepped into the witness-box as PW-3 and further tendered into evidence documents Ex.P1 to Ex.P19 and Mark A to Mark E and closed the evidence. On the other hand, respondent-wife too stepped into the witness-box as RW-3 and examined as many as three witnesses and tendered into evidence documents Ex.R1 to Ex.R5 and closed her evidence.

Ld. Court below after taking into consideration the evidence on record, dismissed the petition under Section 13(1)(ia) of the Act with costs.

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 stands as taken before the Ld.

Court below.

On reappraisal of the evidence and other material on record, the allegations of cruelty and desertion levelled by the appellant-husband against the respondent-wife come across as vague, ill-founded and frivolous. It is the admitted case of both the parties that the respondent-wife had moved an application before the Women's Cell, Rewari, wherein, an assurance had been given by the appellant-husband that he would keep her properly in future. Despite this assurance, given to the respondent-wife, the appellant-husband turned her out from the matrimonial home along with their son and the circumstances in which she along with her son was abandoned by the appellant-husband on 13.08.2008 on the road, leaves no manner of doubt that the appellant-husband had in fact been treating not only the respondent-wife but also their son with utmost cruelty and had intentionally deserted her.

A perusal of the allegations of cruelty as being stigmatized by the appellant-husband cannot by any stretch of imagination be termed as mental cruelty. In fact, in the case in hand, it is the appellant-husband who comes across as being guilty of matrimonial misconduct as his behaviour constitutes willful neglect. The conduct and act of the appellant-husband of levelling scandalous and malicious allegations against the respondent-wife, her mother and brother by itself amounts to inflicting acute mental agony and cruelty on the respondent-wife, especially, when it has not been supported by any shred of evidence. It goes without saying that the lack of conjugal kindness exhibited by the appellant-husband would have naturally caused immeasurable pain, agony and acute distress to the respondent-wife.

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

interference in the impugned judgment . Consequently, the instant appeal stands dismissed and the judgment and decree dated 14th December, 2011 of the Ld. Court below is upheld.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 31, 2019

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No