

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

FAO-2654-2016 (O&M)  
Decided on :September 04, 2019

Poonam

..... Appellant

Versus

Bhupinder Kumar

..... Respondent

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

Argued by : Mr. Davinder Pal Soni, Advocate  
for the appellant.

None for the respondent.

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**Manjari Nehru Kaul, J.**

**CM No.9629-CII-2019**

This is an application under Section 5 of the Limitation Act for condonation of delay of 62 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of the appellant, delay of 62 days in filing the appeal is condoned.

CM stands disposed of.

**FAO-2654-2016**

The instant appeal has been preferred by the wife – Poonam impugning the judgment and decree dated 01.02.2016 passed by District Judge, Family Court, Rohtak whereby her petition under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act') was dismissed.

2. Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the appellant-wife before the learned Court

below may be noticed.

Marriage between the parties was solemnized on 30.01.2005 at Rohtak as per Hindu rites and ceremonies. After marriage, they lived together as husband and wife at Delhi. The marriage was consummated and two sons were born out of the said wedlock. It was pleaded that Rs.8 lakhs was spent at the time of marriage and sufficient dowry was given. The respondent and his family would subject her to merciless beatings as they were dissatisfied with the dowry she had received at the time of marriage. So much so, she would be compelled by them to ask her father to transfer his plot of land at Rohini, Delhi in the name of the respondent else she would not be allowed to live in her matrimonial home. On 04.06.2010, she was mercilessly beaten up by the respondent and his family as a result of which she called up the police for help. On 26.06.2010, she was again subjected to merciless beatings by the respondent and his family forcing her to seek police help yet again. The respondent and his family apologized before the police and assured that the appellant would not be harassed in future. However, they continued with their demand of money and property. On 02.07.2010, she was again physically assaulted by the respondent and his family for which yet another compromise was effected between the parties, before the police on 08.07.2010 as she wanted to continue residing with her husband along with her children. A month later when her parents visited her on the eve of Teej festival, they were humiliated by the respondent and his family, who again asked them to transfer the aforementioned plot situated at Rohini, Delhi in the name of the respondent, in case they wanted the appellant to continue living in her matrimonial home. The parents of the appellant requested the respondent and his family

that till the needful was done, the appellant be kept properly in the matrimonial home. Instead the respondent and his family flared up and did not even hesitate to beat her up in the presence of her parents. Thereafter, the appellant was locked up in a room and her parents were turned out of their house by the respondent. Under these circumstances, the father of the appellant lodged a complaint against the respondent and his family leading to the registration of case FIR No.201 dated 10.08.2010 under Section 342 IPC. After the registration of the aforementioned case, the behaviour of the respondent and his family worsened and finally on 30.08.2010, the appellant was turned out of her matrimonial home by the respondent at the instigation of his mother and sister. On being turned out of her matrimonial home, she informed her parents about the same on 31.08.2010. Thereafter, she along with her parents came to Rohtak where the matter was reported to the police and DD No.25-A dated 31.08.2010 was recorded. Ever since then she had been residing at her parental home along with her children and had been dependent on her parents for all her needs. She pleaded that even though she was harassed by the respondent-husband and his family, she never got any case registered against them because she want to live with her husband along with her two children. She averred that it came to her notice that her husband had filed a petition for divorce in Delhi in which she was proceeded against ex parte. She submitted that she was still willing to live with her husband, who had withdrawn from her society without any reasonable cause and return to her matrimonial home.

3. Per contra, the respondent-husband in his written statement filed before the Court below, refuted and categorically denied the allegations of the appellant-wife. He submitted that he had filed a divorce

petition on the grounds of cruelty which was pending against the appellant-wife before the Court at Delhi in which she had been appearing. He denied that he or his family had ever demanded dowry. He rather stated that he and the appellant-wife were staying in a rented accommodation independently and separately from his family. Hence, there was no question of any interference much less demand of dowry by any member of his family. He categorically denied the allegations of subjecting the appellant-wife to physical assault or compelling her to get her father's plot of land transferred in his name. He alleged that the appellant in connivance with her maternal uncle, who was working in Delhi police, had filed false cases against him and his family. He claimed that the appellant was not a faithful wife and would give away his hard earned money to her parents without his consent. He submitted that the appellant-wife cannot be allowed to seek relief under Section 9 of the Act for her own wrongs as she had herself left the matrimonial home without any reasonable cause.

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

1. Whether the respondent has withdrawn from the society of the petitioner for reasonable excuse? OPR
2. Relief.

5. In order to prove their case, the appellant-wife herself stepped into the witness box as PW-1 and also examined her father Kapoor Singh as PW-2. On the other hand, respondent-husband himself stepped into the witness box as RW-1 also examined Karan as RW-2.

6. After analyzing the evidence led by the parties, the trial Court dismissed the petition by holding that the appellant-wife had failed to prove

that her husband had withdrawn himself from her society without any reasonable cause.

7. We have heard learned counsel for the appellant and perused the evidence as well as other material available on record.

8. It would be apposite to reproduce Section 9 of the Act:

*9. **Restitution of conjugal rights**- When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.*

9. It is thus, apparent that the right to bring a suit for restitution of conjugal rights is the fundamental rule of matrimonial law. It entitles a spouse to the society and comfort of the other and if it stands proved that a spouse has withdrawn from the society of the other without any reasonable cause, the Court should unhesitatingly grant a decree of restitution. In a petition under Section 9 of the Act, the initial onus of proving that the respondent without reasonable cause has withdrawn from the society of the petitioner, obviously rests on the latter. Once the petitioner has discharged his/her onus of proving that the respondent has withdrawn from his/her society without a reasonable cause, the burden then shifts on to the respondent to prove that he had reasonable cause to do so.

10. Adverting to the case in hand, on reappraisal of the entire evidence, some serious and glaring contradictions are clearly discernible in the testimonies of the appellant-wife and her father, who appeared as PW-1

and PW-2 respectively, which indeed raise a serious question mark on the veracity of allegations levelled against the respondent-husband. A perusal of the cross-examination of the appellant-wife demolishes her own case as on one hand, she has categorically admitted that the respondent-husband was away to his work place on the day of Teej festival and in the same breath levelled allegations against him of inflicting injuries on her and her parents when they visited her matrimonial house for the Teej festival. Further, her allegations of having been mercilessly beaten up resulting in her suffering injuries at the hands of the respondent-husband on 30.08.2010 is not even substantiated by any medical evidence. Her allegations of having been turned out of her matrimonial home by the respondent and his family on 30.08.2010 does not inspire confidence at all. There is nothing on record to reflect even remotely as to where the appellant-wife spent the intervening night of 30<sup>th</sup> and 31<sup>st</sup> August, 2010 after being thrown out of her matrimonial home. Though on one hand the appellant-wife herself deposed that it was only on 31.08.2010 she had informed her parents about her having received injuries at the hands of the respondent and his family the previous day, strangely enough her father PW-2 Kapoor Singh while stepping into the witness box deposed that he had approached the police to lodge a complaint qua the aforementioned occurrence on 30.08.2010. It is indeed strange as to how he could have approached the police in advance when he came to know about the alleged incident only on the next day as per his own deposition.

Not only this, a perusal of DD No.25-A dated 31.08.2010, which was filed by the appellant before the police reveals that on the said date the appellant along with her parents and children had approached the

police wherein she had stated that there was some dispute going on between her and the respondent-husband and his family; she was unable to contact the respondent-husband and his family, who had left home earlier in the day, hence, she along with her children was going with her parents with her own free consent. On perusal of the aforementioned report, there is not even a whisper by the appellant against the respondent-husband and his family of having physically assaulted her much less having turned her out of the matrimonial home. It is thus, very evident that the appellant-wife has not approached the Court with clean hands and has been singing different tunes along the way.

11. As a sequel to the above, we have no hesitation in holding that the appellant-wife has miserably failed to show that the respondent-husband withdrew from the society and company of the appellant-wife without any reasonable cause.

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

**(RAJAN GUPTA)**  
**JUDGE**

**(MANJARI NEHRU KAUL)**  
**JUDGE**

September 04, 2019  
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|--------------------------------|--------|
| Whether speaking/non-speaking: | Yes/No |
| Whether reportable :           | Yes/No |