

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

FAO-3905-2015 (O&M)

Decided on : September 26th, 2019

Vijay Singh Kundu

..... Appellant

Versus

Saroj Devi

..... Respondent

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

Argued by : Mr. K.D.S.Hooda, Advocate
for the appellant.

Mr. Devinder Poonia, Advocate
for the respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the husband– Vijay Singh Kundu impugning the judgment and decree dated 16.05.2015 passed by District Judge, Family Court, Hisar whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by him was dismissed.

2. Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the appellant-husband before the learned Court below may be noticed.

Marriage between the parties was solemnized on 10.11.2008 as per Hindu rites and ceremonies. Parties cohabited together as husband and wife and a son was born out of the said wedlock on 18.08.2009. The marriage was a simple affair sans any dowry. The behaviour of the

respondent-wife from the very beginning was unbecoming not only towards the appellant-husband but his family as well, which was thus, a constant source of embarrassment and humiliation for the appellant-husband and his family. She would pressurize the appellant-husband to move into a separate accommodation and also refused to perform her marital duties. The father of the respondent-wife was an alcoholic and lived in close vicinity of their matrimonial home. He would land up in their house almost every other day in an inebriated state and then create nuisance. It was alleged that the respondent-wife refused to nurse her ailing father-in-law and instead would retort that the appellant-husband, who was an Air Force Personnel and posted in Jodhpur at that point of time, should resign from his job and attend to his father. In April, 2009, the respondent-wife got pregnant and after collecting her belongings including valuables left the matrimonial home. The appellant-husband went to her parental home to bring her back but he was instead threatened with dire consequences. He submitted that at the time of delivery of their child, he paid for all the medical expenses but still he was not allowed by the respondent-wife to see the child. After getting discharged from the hospital, the respondent-wife refused to accompany the appellant-husband to the matrimonial home. He alleged that under the influence of a man, who was serving in the Indian Army, she had filed a false complaint on 16.06.2010 to the senior officers of his unit regarding non-payment of maintenance and also levelled allegations of harassment against him. On 20.07.2010, he booked railway tickets for the respondent-wife for Jodhpur where he was posted at that point of time so as

to make peace with her but she refused to accompany him. Even after the delivery of the child, she refused to accompany the appellant-husband back and rather told him that she had been forced to bear a child since he was not a partner of her choice. His repeated efforts to visit and meet his son failed and on one occasion was even physically assaulted by his father-in-law. The panchayats which were convened to bring about a reconciliation between the parties bore no fruit. He thus, prayed for dissolution of their marriage by a decree of divorce.

3. Per contra, the respondent-wife by way of her written statement filed before the Court below refuted and categorically denied the allegations of the appellant-husband. She submitted that the marriage was an extravagant affair and sufficient dowry was given to her but her in-laws were dissatisfied with the same. She alleged that she was maltreated by her husband and deserted. The appellant-husband would physically abuse her. Despite many panchayats having been convened, the appellant-husband and his family refused to keep her until and unless their demands of dowry were satisfied. When she could not fulfill their demands she was thrown out of the matrimonial home with all her belongings. She denied that she had left the matrimonial home in April, 2009 and rather alleged that it was the appellant-husband and his family, who had thrown her out from the matrimonial home in June, 2009.

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

1. Whether the petitioner is entitled for a decree of divorce on the ground of cruelty, as alleged in the petition? OPP
2. Whether the petitioner has been deserted by her respondent-wife, as alleged? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Relief.
5. Both the parties adduced evidence in support of their respective stands. The appellant-husband himself stepped into the witness box as PW-1. Besides him, he examined his father Ram Kumar Kundu as PW-2 and Ishwar Singh as PW-3 and tendered all the relevant documents. On the other hand, respondent-wife herself stepped into the witness box as RW-1 and Vijay Kumar, Criminal Ahlmad as RW-2.
6. The trial Court after analyzing the evidence led by the parties, dismissed the petition filed by the appellant-husband by holding that the appellant-husband could not prove the allegations of cruelty and desertion against the respondent-wife.
7. We have heard learned counsel for the parties and perused the evidence as well as other material available on record.
8. Learned counsel for the appellant has submitted that the Court below has gravely erred in not appreciating the evidence led in the correct perspective. He urged that the conduct of the respondent-wife amounted to nothing but cruelty as she had also got false criminal case registered against the appellant-husband, in which he was subsequently acquitted.

9. During the pendency of the instant appeal, the parties were referred to Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement. An affidavit dated 10.09.2019 was filed by the appellant-husband wherein he undertook to pay an amount of ₹ 15 lakhs to the respondent-wife towards permanent alimony and ₹ 10 lakhs to the minor son namely Krish towards maintenance in the eventuality of marriage between the parties being dissolved by a decree of divorce.

10. The efforts made by the Mediation Centre as well as by this Court to bring about an amicable settlement between the parties failed miserably as the appellant-husband was adamant that in view of the false criminal cases registered against him, he and his family had suffered a lot of humiliation in society as well as mental harassment leaving no scope whatsoever for the parties to live together as husband and wife ever again. The respondent-wife on the other hand, reiterated her allegations of harassment against the husband.

12. In these circumstances, it appears unrealistic to expect the parties to reconcile and live together as husband and wife. Consequently, the appeal stands allowed and the impugned judgment dated 16.05.2015 passed by the Court below is set aside. The marriage between the parties is dissolved by a decree of divorce. Decree sheet be prepared accordingly. The appellant-husband shall however, remain bound by the terms and conditions of the affidavit dated 10.09.2019, which already stands taken on record. The respondent-wife would be entitled to an amount of ₹ 15 lakhs

towards permanent alimony and another amount of ₹ 10 lakhs shall be deposited in the Bank in the form of FDR in the name of son namely Krish within a period of six weeks from the date of this order in terms of the affidavit dated 10.09.2019. It goes without saying that the son of the parties namely Krish would be entitled to get all the benefits, which would flow from the appellant-father's service, who is serving in the Indian Air Force, if permissible, in law.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

September 26, 2019
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Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No