

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

FAO-6397-2016 (O&M)
Date of Decision:05.07.2019

Shri Arvind Selwal

. Appellant

Vs.

Smt. Sudesh

. Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

Present: - Mr.Satish Kumar Malik, Advocate,
for the appellant.

Mr.Jitender Malik, Advocate,
for the respondent.

RAKESH KUMAR JAIN, J.

This appeal is directed against the judgment and decree dated 19.09.2016 by which a petition filed under Section 13(1)(ia) & (ib) of the Hindu Marriage Act, 1955 [for short 'the Act'] by the appellant has been dismissed.

In brief, the marriage of the appellant with the respondent was solemnized on 31.01.2005 at Sonipat as per Hindu rites and ceremonies and out of this wedlock they were blessed with a daughter, namely, Ankita on 30.12.2007, who is living with the respondent. The appellant has alleged that his relationship with the respondent came to an end in August 2011 when she stopped cohabitation with him. The appellant has sought the decree of divorce, *inter alia*, on the ground of cruelty and desertion alleging that at the time of his marriage, the marriage of his younger brother and the younger sister of the respondent was also solemnized but on the very first day the respondent had uttered that her marriage has been performed

forcibly by her parents. Secondly, the behaviour of the respondent has been allegedly rude and cruel towards the appellant and his family members and she always wanted to live separately. The expenses of her higher education were borne by the appellant. The respondent was allegedly in the habit of insulting the appellant in the presence of his family members and relatives on trivial issues. Thirdly, the respondent frequently used to visit her parental home and compelled the appellant to shift to Sonipat from Delhi. He had allegedly purchased House No.532/29, Vijay Nagar, Sonipat but still the respondent kept on picking up quarrels on petty matters. Fourthly, the respondent and her family members used to threatened the appellant to implicate in a criminal case, inasmuch as, the younger sister of the respondent, who was married to the younger brother of the appellant, took the matter to the Police Station, Sonipat on 18.04.2008 and made a false complaint of demand of dowry involving the parents of the appellant as well. The father of the appellant has also expressed his feelings in his personal diary (Ex.P4). Fifthly, the marriage of his younger brother with the younger sister of the respondent was dissolved in the year 2010 on the basis of a settlement. The younger brother of the appellant was given beatings in the Court premises by the family members of the respondent-wife and the matter was reported to the police for which father of the respondent had apologized and the matter was compromised in writing on 5.10.2010. It is alleged that the father of the appellant died on 5.11.2010 because of the misbehaviour of the respondent and her family members. Sixthly, the respondent was posted at Ambala College of Engineering Applied Research, Ambala and got accommodation where the appellant had to reside with her whereas his widowed mother and younger brother continued to reside at Sonipat. Seventhly, the respondent had allegedly refused to cohabit with the

appellant and hence there was no physical relationship between them since August, 2011. Eighthly, the respondent had allegedly tried to kill the appellant by administering him some medicines in food. The respondent was allegedly quarrelsome woman, who had even though joined Central University, Jammu and left the job at Ambala but used the college accommodation at Ambala and lastly the respondent had registered an FIR No.55 of 2014 under Sections 498A, 406 and 406 read with Section 34 of the IPC against the appellant and his family members in which they were ultimately acquitted vide judgment Ex.PW1/8.

On the other hand, the case of the respondent is that the appellant is in a habit of making false and baseless allegations regarding cruelty and desertion. It is alleged by the respondent that the parties had cohabitated at Ambala upto December 2013 and therefore, all acts of alleged cruelty were stood condoned by the act and conduct of the appellant. It is further alleged that there is no corroboration to any of the allegation made by the appellant in regard to the misbehaviour of the respondent in the presence of the colleagues of the appellant. It is also the case of the respondent that there is no evidence on record that she was not interested to marry her or she has ever refused to serve the appellant or had ever given him any such medicine in his food which may threaten his life. Rather it is the case of the respondent that the appellant wanted to get rid of her and has filed this petition for seeking decree of divorce instead of filing any application for restitution of conjugal right or even custody of his minor daughter. It is further alleged that the appellant has filed a petition of divorce on 11.11.2013 allegedly on the ground of misbehaviour of the younger sister of the respondent with his younger brother on which the respondent had no control. All the allegations made by the appellant were thus totally denied

and therefore, on the pleadings of the parties, the learned trial Court framed the issues in regard to the cruelty and desertion which were tried together and the finding was recorded against the appellant.

Learned counsel for the appellant has reiterated the stand taken by the appellant in his pleadings and in order to prove the same has relied upon the evidence of the appellant, who has appeared as PW1 and his mother Krishna as PW2 and besides certain documents which were tendered as Ex.P1 and Ex.PW1/8.

The learned Court below has recorded a firm finding of fact that the appellant has failed to prove, from any kind of cogent evidence on record, the act of cruelty and desertion by the respondent.

Insofar as desertion is concerned, the appellant was supposed to prove that the respondent has been living separately, without any sufficient reason, continuously for a period of two years before filing of the petition. The petition was filed on 11.11.2013 and the desertion has been alleged from August 2011 but there is no evidence brought on record the fact that the respondent has been living separately from the appellant from August 2011 much less without there being any sufficient cause. Rather no petition has been filed by the appellant for the purpose of seeking restitution of conjugal rights or for taking the custody of his daughter from the respondent if he had any kind of love and affection towards his daughter rather this petition is filed straightway on 11.11.2013. The learned Court below has further found that even the FIR was lodged by the respondent on 1.3.2015 much after the filing of the petition for divorce, therefore, it was not a part of the pleadings of the appellant for the purpose of seeking the decree of divorce rather it was a case of the respondent that the appellant wanted to get rid of her for want of insufficient dowry.

Although learned counsel for the appellant has raised all the contentions raised before the Court below vehemently but in the absence of any evidence brought on record much less convincing, there is hardly any reason for this Court to interfere in the present appeal in order to set aside a well reasoned judgment passed against the appellant.

In view of the aforesaid facts and circumstances, the present petition is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

05.07.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*