

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

**FAO-6754-2016 (O&M)
Decided on : 22.08.2019**

Mukesh

... Appellant(s)

Versus

Ekta

... Respondent(s)

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

Argued by: Mr. R.S. Badhran, Advocate
for the appellant(s).

Ms. Richudeep Bajaj, Advocate for
Mr. Rajiv Kataria, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the husband – Mukesh, whereby, he has impugned the judgment and decree dated 03rd October, 2016, passed by the Ld. District Judge (Family Court), Karnal (in short 'Ld. Family Court') vide which the petition filed by the respondent-wife – Ekta, under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for restitution of conjugal rights was allowed.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the respondent-wife (petitioner therein) before the Ld. Family Court, may be noticed. The marriage between the parties was solemnized on 14th December, 2006 at Karnal. The marriage was consummated and a son was born on 06th May, 2007, out of the wedlock. She *inter alia* pleaded that despite her parents having spent ₹ 13.00 lakhs on her wedding and showered her and her in-laws family with gifts including gold on various occasions, their greed was un-

satiated, as she would be subjected to taunts for not getting sufficient dowry. So much so, she was subjected to continuous physical and mental abuse by the appellant-husband and his family, even during her pregnancy which resulted in health issues of her child. On 09th August, 2008, the appellant-husband came home under the influence of liquor and demanded that the respondent-wife get an amount of ₹ 7.00 lakhs from her parents for the purchase of a car, but when she expressed her inability and reluctance, she was turned out from her matrimonial home. It was the neighbours of the respondent-wife, who telephonically informed her parents at Karnal, who then rushed to Panipat and brought her along with her son to their home. Thereafter, Panchayats were convened where despite an assurance having been given by the appellant-husband and his family, their behaviour continued to be the same as before. On 18th September, 2009, again a demand was made by the appellant-husband for a luxury car, since they were moving into a new house. On her refusal, the respondent-wife was subjected to merciless beatings by the appellant-husband and his family and thereafter thrown out from the matrimonial home along with her child. On 17th October, 2009, the appellant-husband came to her parental home for taking their son with him for Diwali pooja but despite the requests and pleadings of her parents to take her as well, he refused. She, then, reluctantly allowed the son to be taken by the appellant-husband for two days for attending the Diwali pooja, as he promised that the son would be brought back within two days. The child was not brought back even after four days, so the respondent-wife along with her relatives went to the house of the appellant-husband to get her minor son back. On reaching there, she was informed that the son was living at Gurgaon with his paternal aunt. A Panchayat was thus convened for the purpose of getting the custody of the minor son but in vain. However, after one month she was telephonically called by the

appellant-husband himself to take the son back, as he had been crying for his mother. It was in this background that the son was finally brought back by the respondent-wife. She pleaded that she was ready and willing to return to her matrimonial home and discharge all her matrimonial obligations for which she had been making persistent and sincere efforts by not only telephoning her husband, but also by convening Panchayats.

Per contra, the appellant-husband (respondent therein) refuted and denied the allegations of the respondent-wife, in the written statement filed before the Ld. Family Court by terming the petition under Section 9 of the Act as a ploy to harass him. He submitted that his life as well as the life of his family was unsafe in the company of the respondent-wife, as she had threatened them that she would kill them by poisoning their food. He alleged that the respondent-wife and her mother were eyeing his agricultural lands and pressurising him to transfer half of the agricultural land in the name of the respondent-wife, else he would not be allowed to live peacefully. He further alleged that it was the wife who had in fact left the matrimonial home along with their son after quarreling with him. He also alleged that their son was forcibly taken away by the wife and her parents, after physically assaulting him and breaking their household articles when they visited his house, leading to the subsequent death of his father on 23rd February, 2010, as a result of shock. He further alleged that the respondent-wife was informed about the death of his father, yet neither she nor anybody from her family came to attend the last rites. Thereafter, he along with his mother and brother-in-law went to the house of the respondent-wife to bring her and the son back to the matrimonial home. She not only refused to accompany him, but also misbehaved with all of them and told them that she was not willing to maintain any further relations with him.

It may be pointed out that the Ld. Family Court directed the appellant-husband to pay the maintenance *pendent-lite* in the sum of ₹ 7000/- per month along with litigation expenses of ₹ 10,000/- to the respondent-wife. However, he failed to pay the maintenance as ordered by the Court, as a result of which his defense was struck off by the Ld. Family Court.

The respondent-wife in support of her case before the Ld. Family Court below, examined as many as three witnesses including herself. The allegations of the respondent-wife were fully corroborated by the testimony of her mother PW-2/Kamla Devi. The respondent-wife during her evidence before the Ld. Family Court also proved copy of the judgment Ex. P-1, passed in a petition under Section 13 of the Act, titled as, “Mukesh Vs. Ekta”, vide which the divorce petition filed by the appellant-husband was dismissed by the Ld. Family Court.

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

Learned counsel for the parties during their arguments have maintained their respective stands and reiterated the submissions made before the Ld. Family Court.

It would be pertinent to mention here that during the pendency of the instant appeal, the parties were referred to the Mediation and Conciliation Centre of this Court, but the same failed to yield any positive result.

After giving our anxious consideration to the submissions made by the parties, we do not find any convincing or cogent evidence forthcoming, which would make us disagree with the findings arrived at, by Ld. Family Court. It would be relevant to extract the observations of the Ld. Family Court in the judgment passed in the petition filed under Section 13 of the Act, by the appellant-

husband, exhibited as P-1, wherein in para no. 19 of the judgment, it has been

observed as under:-

'The ground of divorce taken by the petitioner are ordinary wear and tear of married life and do not amount to cruelty. The occasional outburst of anger, rude language and austerity of temper may amount to misconduct but cannot be termed as cruelty.'

The Ld. Court below has further observed in para no.21 as under:

'The petitioner and his mother, when appeared in the witness box as PW1 and PS2 respectively, have categorically admitted that the respondent had always been ready and willing to return to her matrimonial home.'"

It is, thus, very apparent that the appellant-husband was unsuccessful in bringing home his allegations against the respondent-wife in the aforementioned divorce petition. In fact, the instances of cruelty attributed to the respondent-wife in the divorce petition are exactly identical in nature to what has been submitted by the appellant-husband in his written statement filed in the petition filed under Section 9 of the Act. Once, the allegations of cruelty stand not proved by the appellant-husband in his divorce petition under Section 13 of the Act, then the attributions of cruelty as alleged by him in proceedings under Section 9 of the Act also stand negated. A perusal of the judgment Ex.P1 reveals that the respondent-wife, even as per the appellant-husband and his mother, is willing to return to her matrimonial home but it is the appellant-husband, who has withdrawn from the society of his wife without any reasonable cause and is guilty of not discharging his matrimonial obligations towards his wife.

Resultantly, as a sequel to the above discussion and keeping in view

the facts and circumstances of the case, we feel that no interference in the judgment and decree passed by the Ld. Family Court is called for. Consequently, the present appeal stands dismissed and the judgment and decree dated 03.10.2016 of the Ld. Family Court is upheld.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

August 22, 2019

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No