

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-1143-2017 (O&M)

Date of Decision : 26.08.2019

Vandana Anand Appellant

VERSUS

Pawan Anand..... Respondent

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

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Present: Mr. Pawan Malik, Advocate
for the appellant.

Ms. Divya Sharma, Amicus-curiae
for the respondent.

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MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by Vandana Anand (wife) against the impugned judgment and decree dated 04.01.2017 passed by the District Judge, Family Court, Gurgaon, whereby her petition filed under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 seeking dissolution of her marriage with the respondent/husband-Pawan Anand was dismissed.

It would be pertinent to mention that during the pendency of the instant appeal the service upon the respondent-husband remained unaffected and hence vide order dated 01.03.2018 of this Court the respondent was ordered to be proceeded against ex-parte. Hence, we now proceed to hear and decide the appeal ex-parte after hearing the learned

Gurgaon, the service upon the respondent-husband could not be effected through various modes of substituted service as provided under the High Court Rules and Orders Vol.4, Chapter 7 Part-B. Resultantly, he was proceeded against ex-parte by the Family Court, Gurgaon, as well.

Few facts necessary for adjudication of the instant appeal as pleaded by the wife (appellant herein) in the petition before the Family Court may be noticed.

The parties solemnized their marriage on 20.08.1997 as per Hindu rites and ceremonies. Out of the wedlock two children, a son and a daughter, were born to them. It was pleaded that the wife was subjected to cruel and abusive behaviour by the respondent-husband as well as her mother-in-law as they were dissatisfied by the dowry which had been given at the time of their marriage. She alleged that the respondent-husband was addicted to alcohol and gambling. He would often physically assault the wife in inebriated condition. Due to his addictions the husband would often remain absent from his work place; he would exhaust his salary on his addictions and vices and thereafter borrow money from people. Besides being cruel to the respondent-wife, he would not even spare their children who too would be mercilessly beaten up by him. Due to his addictions, a lot of debt had incurred on him and for which even their house had to be sold off to repay the debts since the creditors had started threatening the family. She submitted that the entire family shifted to Chandigarh from Gurgaon when, due to the death of her father-in-law, the respondent-husband was given compassionate appointment. However, the respondent-husband did not mend his ways. Resultantly, the family had to shift back to Gurgaon after 1-1/2 years. The respondent-husband thereafter abandoned and left the

company of the appellant-wife in April 2013 and refused to return to her.

The learned Family Court after analyzing the evidence adduced by the wife, dismissed her petition and held her not entitled to divorce as she had failed to make out any case of cruelty against the husband.

The learned counsel for the appellant has referred to Order VIII Rule 10 of the Code of Civil Procedure to urge that the appeal should be allowed in terms of the same. The learned Amicus Curiae appointed by this Court has also supported this submission of the learned counsel for the appellant. Learned counsel further urged that the conduct of the respondent-husband who admittedly was proceeded against ex-parte both before the Family Court as well as before this Court reflected not only desertion on his part but also his cruel attitude towards the appellant-wife and his family.

We have heard learned counsel for the parties.

We are in agreement with the learned counsel for the appellant as well as the Amicus Curiae that Order VIII Rule 10 CPC empowers the Court to make such order as it may deem fit in the absence of any written statement from a party.

Further in the instant case, it is apparent that there has been desertion on the part of the respondent-husband willfully and without any reasonable cause. In fact, there has been a total repudiation of the matrimonial obligations on his part. The conduct of the respondent-husband is discernible inasmuch as the appellant-wife has been compelled to stay in a dead marriage which by itself constitutes mental cruelty. The marriage between the parties on the face of it is only on papers without any emotions attached to it. The absolute withdrawal by the respondent-husband from the

company of not only the appellant-wife but also the life of his children would constitute mental cruelty.

As a sequel to the above, the instant appeal is allowed. Accordingly, the judgment and decree dated 04.01.2017 passed by the District Judge, Family Court, Gurgaon, is set aside. The marriage solemnized between the appellant and the respondent on 20.08.1997 stands dissolved by a decree of divorce. Decree Sheet be prepared accordingly.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

26.08.2019

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Note: Whether speaking/reasoned:
Whether Reportable:

Yes / No
Yes / No