

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. M-205 of 2014 (O&M)
Date of Decision: 8.4.2019

Gulshan Kumar

.....Appellant

Vs.

Paramjit Kaur

.....Respondent

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

Present: - Ms. Sheena Khanna, Advocate
for the appellant.

Mr. Sanjeev K. Virk, Advocate
for the respondent.

RAKESH KUMAR JAIN, J. (ORAL)

This appeal is directed against the judgment and decree dated 5.3.2014 by which a petition filed by the respondent-wife under Section 13 of the Hindu Marriage Act, 1955 ('Act' for short) for seeking dissolution of her marriage by way of decree of divorce on the ground of cruelty and desertion has been allowed.

In brief, the marriage between the parties was solemnized on 30.3.1991. They were blessed with two children who are putting up with the respondent at present. Since the appellant-husband was treating the respondent-wife with cruelty and had deserted her, therefore, she filed the petition under Section 13 of the Act for seeking dissolution of her marriage.

The said petition was filed in the year 2009. During the pendency of this petition, the parties entered into some kind of a compromise on 29.7.2010

and it was decided that they would withdraw the cases against each other except for divorce petition which was pending. On 1.3.2014, the learned trial Court had struck off the defence of the appellant-husband on account of non-payment of maintenance. Thereafter, the decree of divorce was passed on 5.3.2014.

Aggrieved against the said decree, the present appeal has been filed in which learned counsel for the appellant has admitted that the order dated 1.3.2014 has not been challenged. It is rather submitted that since the compromise has been arrived at between the parties on 29.7.2010, therefore, the appellant was not liable to pay any amount of maintenance.

In this regard, learned counsel for the respondent has submitted that in the said compromise, which took place during the pendency of the divorce petition, it has been settled between the parties that they would withdraw all the cases against each other except for the divorce petition, meaning thereby they had agreed that the divorce petition would continue after the compromise. It is also submitted that the appellant had not paid the amount of maintenance awarded by the learned trial Court and ultimately, the defence of the appellant was struck off.

We have heard the learned counsel for the parties and after examining the record, are of the considered opinion that the argument of the learned counsel for the appellant that the maintenance was not to be paid by the appellant because there was a compromise on 29.7.2010 is neither here nor there because it was specifically mentioned in the compromise that the parties had agreed to withdraw cases against each other except for the divorce petition and during the pendency of the said divorce petition, the Court had awarded maintenance *pendente lite* which was

not paid by the appellant-husband, therefore, the defence of the appellant-husband was struck off vide order dated 1.3.2014 and in the absence of any defence, the case set-up by the respondent was considered by the learned trial Court and decree of divorce has been granted. Despite various efforts made by this Court, during the pendency of this appeal, in regard to the reunion of the parties by referring the case to the Mediation and Conciliation Centre of this Court, the settlement could not be arrived at. The Mediator has reported on 10.8.2015 that the mediation has failed and thereafter the case was adjourned for hearing of the parties on merits

Since the appellant has not challenged the order dated 1.3.2014, by which his defence has been struck off, even in this appeal or either by filing a separate revision itself would show that the appellant had decided not to pay the maintenance to the respondent-wife and in the absence thereof, there is no error committed by the learned trial Court in striking off the defence of the appellant. No other point has been raised.

In view of the aforesaid facts and circumstances, we do not find any reason to interfere in this appeal for the purpose of setting aside the impugned order passed against the appellant.

The appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

April 08, 2019
Gurpreet

Whether speaking /reasoned : Yes/No
Whether Reportable : Yes/No