

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

FAO-M-5-2014

Decided on :06.12.2019

Shekhar Wadhwa

..... Appellant

Versus

Sonia

..... Respondent

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

Argued by : Mr. Siddharth Grover, Advocate for
Mr. S.S.Narula, Advocate
for the appellant.

Mr. Vijay Lath, Advocate with
Mr. Naveen Sharma, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the husband – Shekhar Wadhwa to impugn the judgment and decree dated 05.12.2013 passed by Addl. District Judge, Panipat whereby his petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') 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 03.07.2003 as per Hindu rites and ceremonies at Panipat. It was a simple marriage sans any dowry. In January, 2005, the respondent-wife developed some complications during her pregnancy as a result of which she was referred to Ganga Ram Hospital, New Delhi by the doctor at Panipat. Despite the

appellant-husband wanting to take the respondent-wife to Ganga Ram Hospital, New Delhi to provide her best possible treatment, the respondent-wife refused to go as a result of which the foetus was aborted on 11.02.2005. It was pleaded that the respondent-wife was working as a lecturer in a college in Panipat before their marriage while he was working in a shop and subsequently, started a PCO and photostat machine in 2005. He alleged that the respondent-wife would often pressurize him to move into a separate accommodation but he refused to do so as he was the only son of his parents. It was also alleged that there was a lot of interference in their marital life by the mother and the brother of the respondent-wife. The respondent-wife would often misbehave with his parents. On 20.02.2005, the respondent-wife left the matrimonial home without even bothering to inform him or his family. His repeated requests to her to return were in vain. Many panchayats were convened but they bore no fruit. So much so, she along with her mother and brother physically assaulted the family of his sister. He even filed a petition under Section 9 of the Act but she did not put in appearance in the court despite being duly served as a result of which she was proceeded against ex parte and on 01.10.2005, his petition was allowed. As she refused to resume cohabitation, he was left with no other option but to file a petition under Section 13 of the Act for dissolution of the marriage on the basis of decree of restitution of conjugal rights. She yet again did not appear and was proceeded against ex parte and on 06.04.2010, the petition under Section 13 was decreed in his favour. After the decree of divorce, the appellant-husband performed a second marriage with one Asha and one son was born out of the said wedlock on 30.01.2009. On coming to

know about the second marriage of the appellant-husband, the respondent-wife filed applications for setting aside the ex parte judgments and decrees passed under Sections 9 and 13 of the Act with the sole intention to harass him and his family. The said applications were allowed vide order dated 25.03.2008. Since he had already remarried, he withdrew the petitions under Sections 9 and 13 of the Act with permission to file a fresh divorce petition on different grounds. Thereafter, the respondent-wife filed two different criminal complaints on similar allegations against the appellant-husband, his family and relatives due to which he had to remain behind bars for about one month. The appellant-husband pleaded that the marriage between the parties had broken down irretrievably and he was now residing with his second wife. He pleaded that in case he is not granted divorce, the life of his second wife and child would be completely ruined. He thus, prayed for dissolution of his marriage with the respondent-wife.

3. Per contra, the respondent-wife in her written statement filed before the Court below, refuted and denied the allegations of the appellant-husband. She submitted that the petition under Section 13 of the Act filed by the appellant-husband was a result of fraud, forgery and concealment of true and material facts. She submitted that her marriage was a lavish one and sufficient dowry was given. However, since the inception of their marriage, the appellant-husband and his family would continuously harass her as they were dissatisfied with the dowry that she had received at the time of her marriage. She continued to bear the hostilities only to save their marriage. On 31.01.2005, she was admitted in Aarti Nursing Home, Panipat due to complications in her pregnancy and after she discharge from the

hospital on 01.02.2005, the appellant-husband refused to take her back to the matrimonial home, rather he left her at her parental home in Panipat. Later on, she got herself admitted in Jindal Nursing Home where she delivered a still born child but nobody from the family of the appellant-husband including the husband came to visit her. She pleaded that no notice was ever served to her in the petition under Section 9 of the Act filed by the appellant-husband. In fact a report of refusal was obtained by the appellant-husband in connivance with one Ram Karan, Process Server on 01.08.2005, which was false and fabricated. After obtaining an ex parte decree under Section 9 of the Act, neither did he reach out to her to resume cohabitation nor did he file any execution in the court as well. She alleged that he took benefit of the ex parte decree passed in his favour and subsequently, filed a petition under Section 13 of the Act for grant of decree of divorce for which again no notice was ever served upon her. Again a refusal report dated 14.10.2006 was secured by him from one Surender Singh, Process Server. The munadi was effected on 09.01.2007 at 12-Neta Ji Colony, Sanoli Road, Panipat, which was situated at a distance of about 4 kms from her parental home. She further alleged that the passing of the aforesaid decrees came to her knowledge only on 08.10.2007 and thereafter she took legal action as a result of which both the decrees were set aside. The revision petition filed by the appellant-husband in the High Court was dismissed on the ground that the Process Server had acted with malice and interfered in the administration of justice and an inquiry was also instituted against the Process Server in consequence of which Surender Singh, Process Server was dismissed from service. The respondent-wife alleged and submitted

that the appellant-husband hurriedly solemnized his second marriage after he found out that the decrees passed in his favour were going to be set aside and then withdrew his petitions. She pleaded that the appellant-husband has already filed a petition under Section 13 of the Act on the same facts, the present petition was not maintainable and he was estopped from filing the same. She denied that the appellant-husband ever convened any panchayat and rather stated that in fact it was her family, who had convened several panchayats but it was the appellant-husband, who refused to take her back.

4. From the pleadings of the parties, court below framed the following issues:

1. Whether the respondent has treated the petitioner with cruelty, as alleged? OPP
2. Whether the respondent has deserted the petitioner without any reasonable cause? OPP
3. 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 and tendered other documentary evidence. On the other hand, respondent-wife stepped into the witness box as RW-1 and also tendered documentary evidence.

6. On an analysis of the evidence led, the trial Court dismissed the petition filed by the appellant-husband.

7. We have heard learned counsel for the parties and reappraised the evidence as well as other material available on record.

8. It would be pertinent to mention that 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, however, all efforts failed miserably.

9. On a reappraisal of the evidence and other material available on record, it is very evident that only frivolous and vague allegations qua cruelty have been levelled against the respondent-wife, which are not supported by any cogent much less convincing evidence. In fact it is the appellant-husband whose role definitely comes under a scanner. He has not even led any evidence in support of his pleadings that the respondent-wife refused to go to Delhi when she developed complications during her pregnancy resulting in the foetus getting aborted. Even assuming for the sake of arguments, that there is some grain of truth in the appellant-husband's allegations, the same cannot be said to fall within the ambit of cruelty much less an act which would entitle him to a decree of divorce. The least that the appellant-husband could have done was to place on record, some medical report to substantiate his allegations against the respondent-wife. Even the contention of the appellant-husband that the respondent-wife would force him to move into a separate accommodation, cannot be said to be an insufferable act, which would have caused him immeasurable pain and agony making it impossible to live together with the respondent-wife. In the absence of any specific dates and incidents having been given, it could at best be stated to be one of those trivial disputes and disagreements, which arise in each and every marriage. The submission of the appellant-husband that he has since remarried and has a child from the second marriage, hence, his marriage with the respondent-wife should be

dissolved, deserves to be rejected outrightly. It is very evident and obvious that there was some kind of a connivance between the process server and the appellant-husband as a result of which, he managed to get the respondent-wife proceeded against ex parte and eventually when he was caught on the wrong foot, he rushed into a second marriage for which he must now suffer and he does not deserve any sympathy much less relief.

10. As a sequel to the above discussion, we do not find any ground to interfere in the impugned judgment dated 05.12.2013 passed by the court below, which is well reasoned one.

Consequently, the present appeal being devoid of any merit stands dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

06.12.2019
sonia

Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No