

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

FAO-M-258-2015

Decided on : October 23, 2019

Amit Kumar

..... Appellant

Versus

Meenu Bawa

..... Respondent

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

Argued by : Mr. P.K.Kataria, Advocate
for the appellant.

Mr. Veneet Sharma, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the husband – Amit Kumar to impugn the judgment and decree dated 16.03.2015 passed by Addl. District Judge, Fast Track Court, Amritsar 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 09.12.2009 as per Hindu rites and ceremonies at Amritsar. The appellant-husband was serving in the Indian Army. No child was born out of the said wedlock. The marriage was a simple one as the appellant-husband was firmly opposed to

the concept of dowry. The behaviour of the respondent-wife from the very beginning of their marriage was highly unbecoming as she demanded that both she and her husband shift to a separate accommodation. Since the appellant-husband expressed his inability to do so, she would pick up quarrels resulting in an uncongenial atmosphere at home. The appellant-husband got posted to Mumbai and was allotted a bachelor's accommodation, which was well within the knowledge of the respondent-wife. However, in order to harass and humiliate him, she landed in Mumbai on 15.04.2012 unannounced and demanded that he take her to his place of posting, which caused him a great deal of humiliation and embarrassment amongst his colleagues and senior officials. With great difficulty, the appellant-husband managed to get a family quarter. She would create ugly scenes there as well and misbehave with the orderlies, who were on duty at the family quarters. The matter was then brought to the notice of the higher officials. Resultantly, the parents of the parties were called to settle the matter but all efforts failed. She was in the habit of stealing money from the wallet of appellant-husband and would also use his ATM card without his knowledge many a times. On 03.07.2012, she attacked him with a pair of scissors while he was asleep but somehow he managed to save himself. On 07.07.2012, after stealing his ATM card, she yet again withdrew money with it. On being confronted, she denied the same. He therefore, filed a complaint before the bank authorities to trace out the culprit. When the CCTV footage was checked, it was the respondent-wife, who was found withdrawing the money. She admitted to her guilt and assured that she would not repeat such acts in future. Thereafter on 15.07.2012, on reaching

their matrimonial home at Amritsar, she slapped him and told him that she would live with him only on the condition, if he agreed to live separately from his father and sisters. She thereafter, left the matrimonial home along with all her belongings but not before creating a ugly scene, which was noticed by the people of their locality. Hence, the appellant-husband prayed for dissolution of marriage on the basis of cruelty.

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 a huge dowry and gifts had been given by her family both before and at the time of their marriage. Despite this, she was ill-treated and frequently taunted for bringing dowry, which was not worthy of the social status of the appellant-husband and his family. In December, 2009 after the appellant-husband left for his posting in Jammu, she was subjected to continuous physical as well as mental harassment. She continued to bear the hostilities for the sake of their marriage. In 2010, the appellant-husband asked her to join his company in Jammu. The sister of the appellant-husband, who was staying with them and pursuing her studies for B.Ed from Jammu, would often instigate the appellant-husband against her as a result of which she was sent back to her matrimonial home in their native village. The illegal demands of dowry were continuously made by her father-in-law and another sister-in-law. She informed her parents about the demands, who then arranged a sum of Rs.50,000/- from her uncle and handed over the same to her father-in-law. However, this did not help in improving the behaviour of her husband and his family. She would be threatened by the sisters-in-law that they would get their brother married to

a rich girl and oust her from the matrimonial home. In November, 2010, when the appellant-husband fell ill, he requested her to come to Jammu and nurse him. She dutifully did the same but his behaviour remained the same as before. On 07.01.2011, she was thrown out of his house in Jammu. It was averred that her parents had paid Rs.50,000/- each in September, 2010, October, 2010 and November, 2010 but the greed of her in-laws remained unsatiated. On the promotion of the appellant-husband as Lieutenant on 11.01.2012, the demands of the husband and his family also increased. She claimed that she went to Mumbai only when she was telephonically asked by her husband to join him but on her arrival she was subjected to merciless beatings. She thus, prayed for dismissal of the petition.

4. From the pleadings of the parties, following issues were framed by the learned trial Court:

1. Whether the petitioner is entitled to get a decree of divorce from the respondent on the ground of cruelty?
OPP
2. Whether the petition of the petitioner is not maintainable in its present form? OPR
3. Whether the petitioner is estopped by his own act and conduct from filing the present petition? OPR
4. 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 examined three other witnesses. On the other hand, respondent-wife stepped into the witness box as RW-1 and examined one other witness.

6. On an analysis of the evidence led, the trial Court dismissed the petition filed by the appellant-husband by holding that the appellant-husband was unable to prove cruelty against the respondent-wife.

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

8. On reappraisal of the evidence on record and the impugned judgment as well as after our interaction with the parties, it is very apparent that the parties who have been living separately since 2012 are not willing to relent and are maintaining their allegations against each other. Due to their temperamental incompatibility and the fact that for the past so many years there has been no conjugal relationship between the parties, it would not be wrong to presume that the marriage of the parties has indeed broken down beyond repair. The possibility of both of them leading a happy married life together is inconceivable on account of the bitterness which continues to exist between them.

9. 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. An affidavit dated 17.10.2019 was also filed by the appellant-husband wherein he undertook to pay an amount of Rs.18 lakhs to the respondent-wife as permanent alimony towards full and final settlement, in case the instant appeal seeking dissolution of his marriage with the respondent-wife was allowed. The wife, who was present in the Court, was also agreeable to the above proposal of the husband.

10. As a sequel to the above, the present appeal stands allowed and the impugned judgment dated 16.03.2015 passed by the court below is set aside. The marriage between the parties is dissolved by way of decree of divorce. Decree sheet be prepared accordingly. The appellant-husband shall however, remain bound by the affidavit dated 17.10.2019, which already stands taken on record and pay an amount of Rs.18 lakhs in six installments of Rs.3 lakhs each to the respondent-wife as full and final payment towards permanent alimony within a period of six months from the date of this order.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

October 23, 2019
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Whether speaking/non-speaking: Yes/No

Whether reportable : Yes/No