

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

FAO No.M-34 of 2015

DATE OF DECISION : 06.12.2019

Jag Mohan

...Appellant

Versus

Neelam

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present : Mr. Deepak Jain, Advocate,
for the appellant.

Mr. Johan Kumar, Advocate,
for the respondent.

KARAMJIT SINGH, J.

The present appeal has arisen from the judgment and decree dated 22.08.2014 passed by the Additional District Judge, Palwal, vide which the petition filed under Section 13(i)(a) of the Hindu Marriage Act, 1955 (hereinafter referred as 'the HMA'), for dissolution of marriage, has been dismissed.

In brief, Jag Mohan, the appellant, had entered into the matrimonial tie up with respondent-Neelam on 27.11.2005 at Palwal, as per Hindu rites. After marriage, parties resided together. Out of this wedlock, a son, namely, Lukkey was born, who is presently residing with his mother. The appellant-husband brought the afore-stated petition under Section 13(i)(a) of the HMA, alleging that after the marriage, the behaviour of the respondent-wife and her family members was very cruel towards him. The respondent-wife used to quarrel and insult the appellant-husband. On 15.12.2006, father of the respondent-wife visited the house of the appellant-husband, in his absence and

took away with him the respondent-wife and all her ornaments and Rs.80,000/- in cash and thereafter, respondent-wife never came back to her matrimonial home. The appellant-husband made his best efforts to bring the respondent-wife back to her matrimonial home and to live with him but his all efforts went in vain.

Respondent-wife in the written reply admitted the marriage but denied all other allegations of the appellant-husband and added that in spite of giving sufficient dowry at the time of her marriage, the appellant-husband and his parents were not satisfied with the same and gave beatings to her and demanded Rs.4,00,000/- or a car. It was also pleaded that on 15.12.2006, the appellant-husband and his parents turned the respondent-wife and his son out from her matrimonial home in wearing clothes.

From the pleadings, following issues were framed by the learned Court below:-

1. Whether the petitioner is entitled to seek a decree of divorce on the grounds mentioned in the petition?OPP.
2. Whether the petition is not maintainable?OPR.
3. Whether the petitioner has no cause of action or locus standi to file the present petition?OPR.
4. Relief.

Appellant-husband examined himself as PW1, Om Parkash as PW2, Roop Singh as PW3. On the other hand, respondent-wife examined herself as RW-1.

Learned trial Court, on appraisal of the evidence and pleadings of the parties, came to a conclusion that the appellant-husband was not able to produce any convincing evidence which proved that the marriage between the

parties is liable to be dissolved on the allegations mentioned in the petition and therefore, vide judgment and decree dated 22.08.2014, dismissed the appellant's petition.

To assail correctness of the judgment and decree dated 22.08.2014 and to seek its reversal, the appellant-husband has filed this appeal.

Learned counsel for the appellant-husband argued that the divorce petition deserves to be allowed on the ground of cruelty and desertion on the part of the respondent-wife. It is further argued that after the marriage, the respondent-wife treated the appellant-husband with cruelty and finally, she left the matrimonial home on 15.12.2006 and while doing so, she also took away all the jewellery. Learned counsel for the appellant-husband referred to the depositions of PW1, PW2 and PW3 to establish the grounds of cruelty and desertion against the respondent-wife.

On the other hand, learned counsel for the respondent-wife contended that at the time of marriage, sufficient dowry was given to the appellant-husband and other members of his family but they were not satisfied with the said dowry. They started raising demand of more dowry and while doing so, they maltreated the respondent-wife. When the said demand of the appellant-husband and other members of his family was not fulfilled, they had thrown out the appellant-wife and her minor child out of their house. It is further contended that false allegations of cruelty and desertion had been levelled against her. Actually, the respondent-wife was compelled by her husband to leave the matrimonial house and thereafter, no efforts were made by him for reconciliation or for restitution of conjugal rights. Rather the respondent-wife filed petition under Section 9 of the HMA, in which directions were given by the court to the appellant-husband to maintain his wife. While

concluding his arguments, learned counsel for the respondent-wife urged that the appeal deserves to be dismissed.

We have considered the submissions made by the learned counsel for the parties.

Marriage between the parties was solemnized on 27.11.2005 and out of this wedlock, one male child was born, who is presently living under the care and custody of the respondent-wife. The parties are stated to be living separately since 15.12.2006. The present divorce petition was filed by the appellant-husband on 11.09.2012. While appearing in the witness-box, the appellant-husband admitted that he never filed any petition under Section 9 of the HMA seeking decree for restitution of conjugal rights between the parties. There is also nothing on the record to show that the appellant-husband ever claimed custody of his minor child, who is presently residing with the respondent-wife.

The appellant-husband has sought divorce from the respondent-wife on the grounds of cruelty and desertion. In the divorce petition, no specific instance of cruelty on the part of the respondent-wife has been cited by the appellant-husband. In the petition, it was simply pleaded that the behaviour of the respondent-wife was very cruel towards the appellant-husband from the very beginning of the marriage and she was a quarrelsome lady. Such type of general allegations are not sufficient to prove the ground of cruelty. Mere coldness or lack of affection cannot amount to cruelty. Even, frequent rudeness of language unless it is absolutely intolerable, cannot be termed as cruelty as has been held by the Hon'ble Apex Court in **Samar Ghosh v. Jaya Ghosh, 2007(2) Criminal Court Cases, 663.**

The respondent-wife appeared in the witness-box as RW1 and suggestion was put to her by the opposite counsel in her cross-examination that it is correct that in the petition under Section 9 of the HMA filed by the wife, the court directed her husband-Jag Mohan to maintain her. There is also no dispute regarding the fact that after 15.12.2006, the appellant-husband remained silent for about six years and then he filed the present divorce petition. However, during the above-said period of six years, he never moved any court to seek relief of restitution of conjugal rights. So, the appellant-husband has also failed to prove the ground of desertion against the respondent-wife.

In the light of the afore-said discussion, we do not find any ground to interfere in the impugned judgment and decree and the same is, thus, upheld and the instant appeal is hereby dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

06.12.2019

adhikari

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