

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

FAO-M-64-2015 (O&M)
Decided on : October 04, 2019

Gurmukh Singh Bhullar

..... Appellant

Versus

Raminder Kaur

..... Respondent

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

Argued by : Ms. Shubreet Kaur, Advocate
for the appellant.

Mr. P.B.S.Goraya, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the husband – Gurmukh Singh Bhullar impugning the judgment and decree dated 28.10.2014 passed by Addl. District Judge, 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 19.11.1999 at Batala. Two children were born out of the said wedlock. The behaviour of the respondent-wife from the very beginning of their marriage was highly unbecoming not only towards him but also his parents. She would shirk her

matrimonial obligations and duties. So much so, she had no time or concern for her children as a result of which they were neglected and their studies too suffered. She would claim that the status of the husband was not at par with her's and she had been compelled to marry him due to the pressure exerted by her family. It was alleged that she lived the life of moral depravity as she often spent nights with different men. On being confronted by the husband, she would indulge in abusive behaviour. In November, 2005 she left the matrimonial home and went to her parental home. On being approached by the husband to settle the matter between them, she expressed her wish to dissolve the marriage leading to the execution of "*Fargatinama*" (panchayati divorce) between them. All the dowry articles were returned to her and a cheque of Rs.1 lakh too was handed over to her as permanent alimony. She stated that she would have no concern with the appellant-husband henceforth. On 25.05.2006, the appellant-husband filed a divorce petition at Gurdaspur. However, a compromise was effected on 06.10.2006 between the parties wherein the respondent-wife agreed to reconcile and resume cohabitation. However, the same was short lived as the respondent-wife left him again along with the minor children, within two days and ever since then, she had been residing in her parental home despite earnest efforts made by the appellant-husband to reconcile the matter.

3. On the contrary, the respondent-wife in her written statement filed before the Court below, refuted and denied the allegations of the appellant-husband. She specifically denied the execution of any "*Fargatinama*" and alleged that the same had been fraudulently procured.

She claimed that the amount of Rs.1 lakh paid to her through cheque was in lieu of a loan, which had been taken by the appellant-husband from her parents for the purchase of a car. She further submitted that the appellant-husband had procured her signatures on blank papers and stamp papers for the purpose of applying for a passport and visa; the same had thereafter been misused by him. She submitted that she lived in her matrimonial home till 22.12.2010 when she was ousted from there along with the minor children as a result of which she was left with no other option but to live in her parental home where she had been living ever since then. It was the father of the respondent-wife, who had been convening panchayats time and again to make peace with the appellant-husband but the same did not fructify due to the hostile attitude of the husband.

4. Replication was also filed by the appellant-husband wherein he refuted the submissions made in the reply by the respondent-wife.

5. It may also be noticed that after the filing of the divorce petition under Section 13 of the Act, the appellant-husband amended the petition whereby he claimed that a panchayati divorce had already been effected between the parties and levelled allegations that the wife indulged in abusive and violent behaviour and there had been no cohabitation between them since 2006.

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

1. Whether the petitioner is entitled to seek divorce from the respondent on the ground of cruelty as alleged? OPP
2. Whether the petitioner is entitled to seek divorce from

the respondent on the ground of desertion as alleged?

OPP

3. Whether the petition is barred under Section 11 CPC ?

OPR

4. Whether the petition is barred under Section 23 Rule 4

CPC ? OPR

5. Relief.

7. Thereafter both the parties adduced evidence in support of their respective stands. The appellant-husband examined as many as 12 witnesses including himself. On the other hand, respondent-wife examined five witnesses including herself.

8. After analyzing the evidence led by the parties, the trial Court dismissed the petition filed by the appellant-husband by holding that the appellant was unable to prove cruelty and desertion against the respondent-wife.

9. 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, it failed to yield any positive result.

10. We have heard learned counsel for the parties and perused the evidence as well as other material available on record. The parties have been reiterating their allegations against each other.

11. Coming to the first ground of cruelty on which the appellant is seeking dissolution of marriage, a perusal of the evidence on record does not reveal any unwarranted and unjustifiable conduct on the part of the

respondent-wife, which could be said to have been so cruel making it impossible for the appellant-husband to live with her. Disgusting and malicious accusations of moral depravity alleged by the husband against the wife rather amounts to infliction of cruelty by him on the respondent-wife and not the other way round specially when the same is not supported by any shred of evidence.

12. A great deal of stress has been laid on "*Fargatinama* Ex.PW-8/1 by the learned counsel for the appellant-husband. The pleaded case of the appellant-husband has been that on account of the cruelty meted out to him, a *Fargatinama* was executed between the parties wherein the dowry articles were returned to the wife along with Rs.1 lakh, which was given as permanent alimony on 19.04.2006. Subsequent to this, he filed a petition under Section 13 of the Act on 25.05.2006, which was however withdrawn on account of a compromise arrived at between them. As per him, the wife returned to the conjugal fold but within two days on 08.10.2006 she deserted him and never returned ever since then. The alleged story of *Fargatinama* followed by the divorce petition under Section 13 of the Act and then a compromise cannot be easily digested. Assuming that a compromise had indeed taken place subsequent to the *Fargatinama* and the respondent-wife had in view of the said compromise returned to the conjugal fold, it is evident and apparent that the appellant-husband had condoned all her earlier acts of alleged cruelty towards him. Once her previous acts were condoned and she had returned to the matrimonial home, the husband cannot be permitted to allege cruelty against her for her acts prior to 08.10.2006. Thus, the only ground, if any, available to the

appellant-husband would be of desertion because there is nothing on record to suggest that during those two days when she returned to her matrimonial home on account of the compromise arrived at between the parties, she had inflicted any cruelty on the appellant-husband. *Fargatinama* Ex.PW-8/1 thus, creates a big doubt and seemingly is a fabrication.

13. Coming to the next contention of the respondent-wife having deserted the appellant-husband allegedly in October, 2006, it raises eyebrows as to why did the appellant-husband wait for as many as 5 years to wake up from his slumber to file the petition under Section 13 of the Act on 12.03.2012. In fact, the case of the appellant-husband is demolished and stands falsified from the evidence of RW-5 Kuldeep Singh, who produced the records of St. Francis School, Kotli Surat Malhi where the children of the parties were studying. As per the summoned record, their daughter Ramneet Kaur was admitted in the said school on 16.03.2007 and remained there as a student upto 06.02.2010. Their son, Parampal Singh, was admitted in the said school on 03.03.2008 and remained there upto 06.02.2010. Hence, in this background, the question of both the children studying in the said school would not have arisen had the mother deserted and left the matrimonial home in 2006 as pleaded by the husband. Since it is the own case of the appellant-husband that the wife has been residing at Amritsar with her parents ever since she deserted him in the year 2006, it does not appeal to reason and is unconvincing as to why the children would continue going to the said school at village Kotli Surat Malhi from Amritsar to study.

14. As a sequel to the above discussion, we do not find any reason

to interfere in the impugned judgment dated 28.10.2014, which is a well reasoned one. There is no cogent much less any reliable evidence to support the stand of the appellant-husband with regard to cruelty and desertion on the part of the respondent-wife. Consequently, the present appeal is dismissed.

As the appeal has been decided on merit, no separate order is required to be passed in this application bearing CM No.26634-CII of 2018.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

October 04, 2019
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Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No