

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

FAO-M-185-2016

Decided on : July 12, 2019

Sukhbir Kaur

..... Appellant

Versus

Kuljit Singh

..... Respondent

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

Present : Mr. A.P.S.Tung, Advocate
for the appellant.

Mr. J.S.Khiva, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the appellant-wife – Sukhbir Kaur against the judgment and decree dated 11.03.2016 vide which the petition filed by the appellant-wife under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') was dismissed by the trial Court.

2. Few facts necessary for adjudication of the instant appeal as narrated in the petition filed by the appellant-wife before the learned Court below may be noticed. The appellant-wife was earlier married with one Amrik Singh on 11.11.1999 and no child was born out of the said wedlock. The said marriage ended in a divorce on 09.03.2006. Thereafter, the appellant-wife got married with the respondent-husband on 20.04.2008 according to the Sikh rites and ceremonies. The appellant-wife and the respondent-husband lived and cohabited together at village Nihaluwal,

District Barnala. No child was born out of the said wedlock. The appellant-wife was the only child of her parents and at the time of their marriage, sufficient dowry was given to the respondent-husband and his family, which included motorcycle, gold jewellery to her parents-in-law and other relatives and furniture etc. As per the appellant-wife, her father gave Rs.30,000/- in cash to the respondent-husband for the treatment of his mother as well and thereafter, another amount of Rs.80,000/- was taken by the respondent-husband from her father for going to New Zealand. Not only this, another sum of Rs.3 lakhs was given by the father of the appellant-wife to the respondent-husband for starting his business at Raikot. The appellant-wife alleged that the intention of the respondent-husband from the very beginning was dishonest and had in fact got married to her only to grab the property of her father. She alleged that the respondent-husband was a drug addict, who sold off her jewellery, which was part of her istridhan. It was also alleged that the respondent-husband in fact would often pressurize the appellant-wife to bring more money from her parents and on her being so pressurized, she on many occasions was left with no other option but to get the same and hand over to him, which he would then squander away. She tried many a times to take the help of her in-laws but they expressed their inability and rather justified the behaviour and addiction of the respondent-husband. It was further averred that not only was the respondent-husband abusive in his behaviour towards the appellant-wife and her parents but whenever she questioned him about his absence from home for days together, she was subjected to merciless beatings. It was also alleged that the respondent-husband had illicit relations with a woman for the last many

years and whenever she confronted the respondent-husband about the same, she was told that since she was 'barren', he was left with no other choice but to have relationship with other women. So much so, after the death of father of the appellant-wife, the respondent-husband left the paternal house of the appellant-wife and demanded that whole of the property of her father be transferred in his name, else he would not return home. As per the appellant-wife, ever since then, there had been no cohabitation between the parties. A complaint was also moved by the respondent-husband with SSP, Barnala against the appellant's mother and other relatives for his illegal confinement, which after a thorough inquiry was found to be false. Hence, it was prayed that the marriage between the parties be dissolved by a decree of divorce on grounds of cruelty and desertion.

3. Per contra, the respondent-husband in his written statement filed before the Court below controverted the averments made by the appellant-wife and denied the allegations contained therein. He submitted that he had filed a petition under Section 9 of the Act at Barnala for restitution of conjugal rights and the petition filed by the appellant-wife was nothing but an attempt on her part to harass him.

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

1. Whether the respondent has treated petitioner with cruelty as alleged in the petition? OPP
2. Whether the present petition is not maintainable in the present form? OPR
3. Whether petitioner is guilty of suppression of material

facts from this Court? OPR

4. Whether petitioner is estopped by her own act and conduct to file the present petition? OPR

5. Relief.

5. Thereafter both the parties adduced evidence in support of their case. The appellant-wife stepped into the witness box as PW-1 and filed an affidavit Ex.PA along with other documents Ex.P2 to P5. She also examined Sahel Singh as PW-2, Harbhajan Singh as PW-3, and Nirjit Singh as PW-4. On the other hand, respondent-husband himself stepped into the witness box as RW-1 and tendered into evidence his affidavit Ex.RA along with documents Ex.R1 and R2.

6. After analyzing the evidence led by the parties as also the other material available on record, the trial Court dismissed the petition by observing that no cogent evidence had been brought forth by the appellant-wife to prove that she had been treated with cruelty and desertion as required under Section 13 of the Act.

7. We have heard learned counsel for the parties and perused 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, it failed to yield any positive result. While hearing arguments, we also interacted with the parties, who were present in Court. During our interaction, the appellant-wife submitted that the respondent-husband had been indulging in obscene behaviour and using abusive language in the

public even during the pendency of the present appeal, which, of course, was empathically denied by the respondent-husband, who alleged that it was a patent lie. The appellant-wife reiterated that the respondent-husband was continuing with his illicit relations with women and in view of the same, it had become impossible for her to live with him.

9. Learned counsel for the parties while addressing arguments stuck to their respective stand and reiterated their submissions made before the trial Court.

10. On re-appraisal of the evidence and other material on record, we feel that the trial Court erred in not appreciating that in her petition under Section 13 of the Act, the appellant-wife had specifically averred that the intentions of the respondent-husband were dishonest right from the beginning of their marriage and in support thereof she had given various instances wherein she had been pressurized to get money from her father. The testimony of the appellant-wife qua her father having given her money on various occasions in fact has gone unchallenged in her cross-examination. Another aspect, which the learned trial Court omitted to take into consideration is the harassment and taunts, which were meted out to her on account of her being unable to bear a child. The appellant-wife in unequivocal terms deposed on oath that the respondent-husband would often taunt her for her inability to bear a child due to which he justified his illicit relations with other women. This part of her deposition again has gone unchallenged in the cross-examination. It is the admitted case of both the parties that no child was born out of the said wedlock. The respondent-husband did not cross-examine the appellant-wife on this and rather the

cross-examination, which was done on the appellant-wife reveals that there was a deliberate silence on the part of the respondent-husband qua this allegation. A man taking constant jibes at a woman and that too his wife for being “infertile” would fall within the gamut of mental cruelty. Without any hesitation, it tantamounts to causing indelible mental agony and thus, cruelty in its severest form. In our considered opinion this by itself is a sufficient ground for grant of divorce under Section 13 (1) (ia) of the Act.

11. In the aforesaid legal and factual background, the inevitable conclusion is that the appellant-wife is entitled to a decree of divorce. Accordingly, the present appeal is allowed. Decree-sheet be prepared accordingly.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 12,2019
sonia

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