

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-5-2016

Date of Decision: 27.2.2019

Jaswinder Singh

.....Appellant

Versus

Kulwinder Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. R.S. Dhiman, Advocate, for the appellant.

Mr. Malkeet Singh, Advocate, for the respondent.

Harnaresh Singh Gill, J.

The instant appeal filed by the appellant-husband is directed against the judgment dated 20.7.2015 passed by the learned Additional District Judge, Gurdaspur, whereby petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act'), has been dismissed.

The appellant-husband had filed the aforesaid petition, inter-alia, with the averments that the marriage between the parties was solemnized on 6.3.2005 at village Phull Puhkta, Tehsil Dasuya, according to Sikh rites and ceremonies. However, out of the said wedlock, no child was born. At the time of marriage, the appellant-husband was posted as Steno in the office of Sub Divisional Magistrate, Bulath, District Kapurthala, whereas the respondent-wife was serving as a Social Studies

Mistress. Though the parties cohabited and the marriage was consummated, yet when the respondent-wife did not conceive even after a period of about four years after the marriage, she had termed the appellant-husband as impotent. The request of the appellant-husband to get both of them medically checked up so as to facilitate respondent-wife's conception, was not acceded to by the respondent-wife. She had rather asked the husband to shift his residence near to her parental house at Tanda. The appellant-husband refused to accede to such request of the respondent-wife because of his old aged parents. Thus, because of the harassment and mental torture on the part of the respondent-wife, the appellant-husband lost his job. Besides, the respondent-wife had also harassed, misbehaved and humiliated the appellant-husband in the presence of the close relatives. It was further alleged that the respondent-wife was 47 years of age at the time of marriage, but she had, by committing a fraud upon the appellant-husband, told her age to be 30 years. It was further averred that the appellant-husband came to know at a later stage that the menstruation of the respondent-wife had stopped due to her old age and for this reason, she was unable to conceive. Thus, the principle aim of the marriage being to beget children, the very purpose thereof stood defeated. The respondent-wife got transferred the petition under Section 10 of the Act, filed by the appellant-husband, to Hoshiarpur. The respondent-wife, thus, got attacked the appellant-husband from some unknown person at Hoshirapur, resulting into the

withdrawal of the aforesaid petition from the Court at Hoshiarpur.

Upon notice, the respondent-wife filed her written statement. While admitting the factum of solemnization of marriage between the parties, the respondent-wife averred that the allegations contained in the petition were totally false. It was averred that the respondent-wife was always ready and willing to undergo medical examination from some Gynaecologist, but it was the appellant-husband, who did not cooperate and that it was the appellant-husband, who was unwilling to have a child from the wedlock. While denying the allegations of harassment and mental torture, it was averred that the appellant-husband, lost his job because of his involvement and having been caught red-handed in a corruption case, by the Vigilance Department. She further averred that because of the conduct of the appellant-husband, she had to file a petition under Section 12 of the Protection of Women from Domestic Violence Act, which was pending adjudication.

On the basis of the pleadings of the parties, the learned trial Court framed the following issues:-

- “1. Whether the respondent has treated the petitioner with cruelty? OPA
2. Whether the petitioner has no cause of action to file the present petition? OPR
3. Relief.”

In evidence, the appellant-husband appeared his own witness as PW1 besides examining PW2-Jagir Singh, whereas

respondent-wife appeared as RW1 and had examined Sadhu Singh as RW2.

The learned trial Court, after having examined the facts and evidence on record and after hearing the counsel for the parties, had vide judgment dated 20.07.2015, dismissed the petition filed by the appellant-husband. Aggrieved there-against, the husband has filed the present appeal.

Learned counsel appearing for the petitioner has submitted that the facts and evidence on record, were sufficient enough to record a finding that the respondent-wife had treated the appellant-husband with cruelty. It is further submitted that in order to justify her own wrongs, the respondent-wife, had labeled the appellant-husband as impotent, whereas the fact of the matter was that the respondent-wife herself was unable to conceive because of her age factor. Thus, while passing the impugned judgment, the learned trial Court, has proceeded on to record its finding that the appellant had failed to prove the allegations of cruelty leveled against the respondent-wife.

Per contra, learned counsel appearing for the respondent-wife, submits that the judgment passed by the learned trial Court, is perfectly justified and legal. The appellant-husband failed to prove on record as to in which manner, a cruelty had been caused to him and/or he had suffered any humiliation, harassment and mental torture at the hands of the respondent-wife. Learned counsel further contends that the cruelty is a factor, which is to be proved by preponderance of evidence and not on the basis of false and frivolous allegations

leveled in the petition. The averments of the divorce petition are to be proved by leading cogent and convincing evidence so as to make out a case for grant of a decree of divorce. On these premises, learned counsel submits that the impugned judgment has been passed after examining the evidence on record and no fault therewith can be found by this Court in the present appeal.

We have heard the learned counsel for the parties. However, we do not find any merit in the present appeal and the same is liable to be dismissed.

The appellant-husband has sought decree of divorce on the ground of cruelty. However, except for his self serving averments in the petition, which were reiterated by him during his testimony as PW1, the appellant did not examine any of his family members. He had examined PW2-Jagir Singh, Numberdar of village Khokhar. It is settled rule of evidence that one who alleges anything, bears the onus to prove the same. The learned trial Court, has rightly found that there was no instance which could be lent too much credence so as to return a finding of cruelty. Rather, the instances quoted by the appellant-husband, had been termed to be the trivialities of a married life. As regards the allegations of the appellant-husband regarding the respondent-wife having concealed her real age, it was found by the learned trial Court that as per the own version of the appellant-husband, both, he and the respondent-wife, were in Government jobs at the time of marriage and/or even before that i.e. at the time of engagement. Thus, it was open to the appellant-husband to have verified her (respondent's) age from

her department. While relying upon various judgments of the Hon'ble Supreme Court, the learned trial Court, has rightly found that if a decree of divorce is granted on the minor wear and tear of the matrimonial alliance, then the very institution of the marriage would stand crumbled.

The appellant-husband, had pleaded in his petition for grant of divorce that the very object of the marriage is to beget children and the respondent-wife being unable to conceive, the said purpose stood defeated. In our considered opinion, this instance cannot be treated to be an act of cruelty. Another instance pleaded by the appellant-husband, that he had been got attacked by the respondent-wife through some unknown persons at Hoshiarpur, was also not proved by leading any evidence. Thus, the appellant-husband has failed to prove that he had suffered any cruelty at the hands of the respondent-wife.

No other point has been urged.

In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

27.02.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No