

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

**FAO-4546-2017 (O&M)
Decided on : 04.09.2019**

Naresh Kumar

... Appellant(s)

Versus

Neena @ Meena Devi

... Respondent(s)

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

Argued by: Mr. Amit Jhanji, Advocate
for the appellant(s).

Mr. R.S. Mamli, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the husband – Naresh Kumar, whereby, he has impugned the judgment and decree dated 26th April, 2017, passed by the Ld. District Judge (Family Court), Ambala (in short 'Ld. Family Court') vide which the petition filed by him, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), seeking dissolution of his marriage with the respondent-wife/Meena on the grounds of cruelty and desertion was dismissed.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the appellant-husband (petitioner therein) before the Ld. Family Court, may be noticed. The marriage between the parties was solemnized on 22nd April, 2002 at Ambala, as per the Hindu rites and ceremonies. A daughter was born on 07th February, 2003, out of the wedlock. It was pleaded that even though the wife was treated with love and affection by the appellant-husband and his parents, yet she would frequently quarrel and misbehave with them on trivial

matters; she would often leave her matrimonial home and only return with the intervention of relatives. In December 2002, the wife went to her paternal home for the delivery of their child. After the delivery of the child, the appellant-husband and his mother went to see the child along with customary sweets and clothes. However, when the appellant-husband and his mother went to the parental home of the wife in March 2003, to bring her back to the matrimonial home after the birth of the daughter, she expressed her un-willingness to return and it was only after a great deal of persuasion, she reluctantly accompanied the appellant-husband to her matrimonial home. However, her attitude allegedly remained the same, as before and within a month of her stay in the matrimonial home, she returned to her parental home in April 2003. She was persuaded many a times to return to her matrimonial home, but to no avail. Her parents also refused to send her back with the husband to her matrimonial home. As the wife represented to the Army Headquarters for maintenance, she was granted ₹ 2000/- per month as maintenance from the salary of the appellant-husband, who is an army personnel, vide order passed in January 2005. All efforts made by the appellant-husband and his family with the help of Panchayats as well as the Army officials to bring about a reconciliation with the wife ended in a futile exercise. As a result of which, maintenance granted to her by the Army Authorities was discontinued. The wife thereafter, filed a petition under Section 125 Cr.P.C. against the appellant-husband, wherein, she and her minor daughter were granted maintenance in the sum of ₹ 6000/- per month i.e. ₹ 3000/- each, respectively. The appellant-husband submitted that he had been regularly paying the said maintenance to the wife and had also filed a petition for the custody of their minor daughter under the provisions of the Guardians and Wards Act, 1890. The appellant-husband pleaded that the wife had subjected him to immense cruelty for

the last almost 11 years, ever since she deserted him in April 2003. In the aforementioned background, he pleaded before the Ld. Family Court that his marriage with the respondent-wife be dissolved on the grounds of 'cruelty' and 'desertion'.

Per contra, the respondent-wife (respondent therein) refuted and denied the allegations of the appellant-husband, in her written statement filed before the Ld. Family Court. She *inter alia* submitted that it was, in fact, the husband, who had meted out cruelty to her and had been harassing her with demands of dowry. She submitted that it was the husband, who had turned her out from her matrimonial home and compelled her to reside with her parents. She alleged that the appellant-husband did not even come to see his new born child and had even refused to maintain the respondent-wife and the child. It was only on account of the representations made by her to the Army Headquarters to trace out her husband that she was granted the said maintenance of ₹ 2000/- per month. She further submitted that when she was called in pursuance to her representations to the Army Headquarters at Pathankot, the husband was asked to get a family quarter allotted to himself, but he refused the same. She submitted that the maintenance of ₹ 2000/-, which had been granted to her by the Army Authorities was discontinued after a compromise was effected between her and husband in June 2005, as a result of which she was taken back to her matrimonial home at Village Pai, Kaithal. The husband never ever visited his parental home at Village Pai during that time, until one day in May 2010, when he finally showed up and beat her up mercilessly. He, thereafter, turned her along with the child out of the matrimonial home. She also submitted that the husband did not pay the maintenance granted to her and her child under Section 125 Cr.P.C. regularly, whereupon, she had to file execution petitions for recovery thereof.

From the pleadings of the parties, the following issues were framed by the Ld. Court below:-

- “1. *Whether the petitioner is entitled to a decree of divorce on the grounds as alleged ? OPP*
2. *Relief.*”

Both the parties adduced evidence in support of their respective stands. The appellant-husband appeared as PW1 and examined his cousin Anil Kumar as PW2. On the other hand, respondent-wife examined as many as three witnesses. She has appeared as RW1 and examined Amrit Lal and Jagdish as RW2 & RW3, respectively.

After analyzing the evidence led by the parties and also the material on record, the Ld. Family Court dismissed the petition filed by the husband under Section 13 of the Act.

We have heard learned counsel for the parties and have also gone through the evidence and other material on record.

It may be noticed that the parties during the arguments reiterated their earlier versions and maintained their respective stands as taken before the Ld. Court below. During the pendency of the instant appeal, the parties were referred to the Mediation and Conciliation Centre of this Court, but the same proved to be a futile exercise.

Adverting to the case in hand, the appellant-husband is seeking dissolution of his marriage with the respondent-wife on the grounds of 'cruelty' and 'desertion'. The instances of cruelty as alleged by the husband do not indicate any such serious issues between the parties, which would have caused acute agony and mental torture to the appellant-husband. In fact, it is clearly discernible that

the husband has been trying to weave excuses to end his marriage with the wife.

As far as the allegation of desertion against the respondent-wife is concerned, the same is bereft of any merit. It is discernible from the evidence led before the Ld. Family Court that the respondent-wife was compelled due to the misdeeds of the appellant-husband to stay away from him, for which he cannot be allowed to take advantage and expect this Court to perpetuate the same. It is his own admitted case that he did not even apply for family accommodation during his posting at family stations. In this background, it is evident that there was intentional and willful desertion on his part. In fact, his conduct of deserting his wife along with their daughter without any reasonable cause would amount to mental cruelty on the wife. Even the allegations of cruelty against the wife cannot by any stretch of imagination be said to be so serious so as to leave him with no other option but to take extreme step of seeking dissolution of their marriage. Taking an over all perspective of the matter, it is the appellant-husband, who is, in fact, guilty of matrimonial misconduct and not the other way round as alleged by him.

In view of facts and circumstances of the case, we feel that the impugned judgment and decree dated 26th April, 2017, passed by the Ld. Family below, does not warrant any interference. Consequently, the instant appeal stands dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

September 04, 2019

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No