

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

**FAO-M-50-2017
Decided on : 29.08.2019**

Vibhore Singh Gautam

... Appellant(s)

Versus

Deepika

... Respondent(s)

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

Argued by: Ms. Neha Jain, Advocate for
Mr. K.S. Dadwal, Advocate
for the appellant(s).

Mr.G.S. Nahel, Advocate,
for the respondent(s).

MANJARI NEHRU KAUL, J.

Instant appeal has been preferred by the husband – Vibhore Singh Gautam, against the judgment and decree dated 11th November, 2016, passed by the Ld. District Judge, Bathinda (in short 'Ld. Court below') vide which his petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') against the respondent/wife – Deepika, was dismissed.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the appellant-husband before the Ld. Court below, may be noticed. The marriage between the parties was solemnized on 05.05.2007 at Chandigarh as per Hindu rites and ceremonies. After marriage, the parties cohabited and lived together as husband and wife and one daughter was born out of the wedlock. It was alleged that the respondent-wife was of a quarrelsome nature and right from the very beginning of their marriage, she would pickup

quarrels with the appellant-husband and his family and would not even hesitate to insult them in the presence of one and all; she would treat the appellant-husband with utter disrespect, refusing to even do or take interest in the normal household work, which would be expected of any wife. So much so, whenever the appellant-husband asked her to do some household chores, she would misbehave and create ugly scenes in the house; many a times, the respondent-wife would leave the matrimonial home without the knowledge and consent of the appellant-husband and would be brought back to the matrimonial home by the appellant-husband with a request to mend her ways. The appellant-husband bore the cruel and unbecoming behaviour of the respondent-wife with the hope that good sense may prevail upon her someday, but with the passage of time her behaviour only worsened. Finally in the last week of December 2011, the respondent-wife left the matrimonial home along with their minor daughter and all her belongings. The appellant-husband made earnest efforts, even through Panchayats to bring her back to the matrimonial home, which however, did not meet with any success. In the first week of December 2013, with the intervention of respectables from both the sides, a compromise was arrived at between the parties that the marriage be got dissolved by a decree of divorce with mutual consent, as the respondent-wife was unwilling to live with the appellant-husband at any cost and all the articles belonging to the respondent-wife had already been returned to her by the appellant-husband. Thereafter, a joint petition under Section 13-B of the Act was filed at Bathinda, but when the case was fixed for final statement of the parties on 18.07.2013, the respondent-wife resiled from the compromise arrived at between the parties and instead started pressurising the appellant-husband to pay a sum of ₹ 20.00 lakhs in cash for suffering the final statement for dissolution of marriage under Section 13-B of the Act, else, she would implicate the appellant-husband

and his entire family in false cases. In the light of the above, petition filed by the parties under Section 13-B of the Act was dismissed by the Ld. Court below.

Per contra, in her written statement, the respondent-wife refuted and categorically denied all the allegations of the appellant-husband. While denying the averments made in the petition, she *inter alia* alleged that in fact it was the appellant-husband who was short tempered and would physically assault her on account of insufficient dowry and over petty matters. She contended that she tolerated the atrocities which were inflicted upon her by the appellant-husband with the hope that his behaviour towards her will improve with the passage of time. She, rather, claimed that in March 2013, it was the appellant-husband, who had turned her out from the matrimonial home with little other than her clothes, even though, she always respected and performed all her marital obligations which are expected from a wife. She further submitted that she was still willing and ready to live with the appellant-husband as his dutiful wife. Further, she denied that any compromise was ever effected between them or that any Panchayat was convened to bring about a compromise between the parties. She, rather, submitted that the appellant-husband had pressurized her to make a statement in the petition filed under Section 13-B of the Act for dissolution of marriage and she further denied that she had ever demanded ₹ 20.00 lakhs from the appellant-husband for getting her final statement recorded before the Ld. Court below in the petition under Section 13-B of the Act.

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

- “1. *Whether the petitioner is entitled for decree of divorce from the respondent on the grounds as mentioned in the petition?OPP*

2. *Whether present petition is not maintainable ? OPP*
3. *Whether the petitioner has got no locus-standi and cause of action to file the present petition?OPR*
4. *Relief.”*

The appellant-husband examined as many as four witnesses and himself stepped into the witness-box as PW-1. On the other hand, the respondent-wife too stepped into the witness-box as RW-1 and closed her evidence.

The Ld. Court below after taking into consideration the evidence on record, dismissed the petition under Section 13 of the Act, holding that the allegations of cruelty and desertion remained unsubstantiated against the respondent-wife.

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.

It would be pertinent to mention here that pursuant to the filing of the instant appeal, this Court vide order dated 06.12.2017, referred the parties to the Mediation and Conciliation Centre of this Court (in short 'Mediation Centre'). However, as per the reports received from the Mediation Centre, due to the non-appearance of the respondent-wife, mediation could not be carried out. It is a matter of record that on as many as four dates, the matter was adjourned due to the non-appearance of the respondent-wife and finally the case file was sent back to this court for further adjudication. Thereafter, vide order dated 15th March, 2018, the parties were directed to appear in-person on 23.07.2018. However, a perusal of the orders of this Court reveals that the respondent-wife failed to put in

appearance despite having been granted enough opportunities. Further, on August 30, 2018, this Court passed the following order:-

“Appellant is present in person.

Respondent has opted not to appear before this Court despite directions on two occasions. She did not appear even before the Mediator during entire proceedings.

Counsel for the respondent seeks time to get instructions regarding appearance of the respondent.

Taking into consideration the mandate of Section 23(2) of the Hindu Marriage Act, we hereby issue specific direction to the respondent to appear before this Court on 29.10.2018 at 2.30 p.m. in order to enable this Court to make endeavour to bring about some amicable settlement between the parties for reunion or parting company subject to any terms and conditions. The direction will be communicated to the respondent by Mr. G.S. Nahel, Advocate for the respondent.

It is made clear that non-appearance of the respondent in person on the next date of hearing may be adversely viewed.”

Thereafter, despite adjournments having been granted on 29.10.2018, 21.11.2018, 27.02.2019, 13.03.2019, 18.07.2019 & 23.07.2019, the respondent-wife did not put in appearance. Since the respondent-wife remained continuously absent, an affidavit was filed by the appellant-husband on 18th July, 2019, stating therein that he was ready to pay ₹ 7.00 lakhs, as permanent alimony in case his plea for divorce was accepted. The case was thereafter adjourned to 23.07.2019.

On the said date, the respondent-wife chose to appear in person and submitted that

she was going to join the company of her husband i.e. appellant, who was posted in Assam and was serving as a Lieutenant Colonel. Counsel for the appellant-husband, however, expressed ignorance about the said development and submitted that as per her instructions the appellant-husband had already submitted an affidavit on 18.07.2019 to the effect that he was ready to pay a sum of ₹ 7.00 lakhs as permanent alimony and part ways with the respondent-wife.

The matter thereafter was again adjourned to 20.08.2019 in the interest of justice. When the matter came up for hearing for final arguments, the appellant-husband was present in the Court along with his counsel, whereas, the respondent-wife was represented by her counsel. During our interaction with the appellant-husband, he maintained the stand he had taken in his affidavit given on 18.07.2019 and submitted that the respondent-wife had made a false statement that she was going to join the company of her husband at Assam as she had not done the same.

It is very evident that even though persistent and continuous efforts were made by this Court to bring about an amicable settlement between the parties, a perusal of the orders of this Court reveal that due to the non-appearance of the respondent-wife, the same could not fructify. It is one of those cases, where on the one hand, the wife submitted that she wishes to join the company of her husband, but at the same time, her conduct suggests otherwise, and she has been willfully not appearing before the Mediation Centre and also been not adhering to the orders passed by this Court. Her conduct, in fact, leads to an inference that she is not willing to live with the appellant-husband and discharge her matrimonial obligations as a wife. In fact, her conduct and action amount to willful desertion and cruelty on her part and not the other way round as contended by her in her written submissions before the Ld. Court below. It is indeed strange that even

though this Court gave enough opportunities and tried to accommodate her by adjourning the case time and again, she avoided appearing in the Court and rather chose to appear only after an affidavit had been submitted on 18.07.2019 by the appellant-husband, wherein, he had submitted that he was willing to part ways and offered to pay ₹ 7.00 lakhs as permanent alimony to her. It has not even been denied by the respondent-wife that she is getting ₹ 15,000/- per month as interim maintenance since the year 2016. The daughter of the parties is now residing with the appellant-husband, who is bringing her up and is taking care of her education and other needs as well.

Had the intention of the respondent-wife actually been to return to her matrimonial home, there was nothing which prevented her from putting an appearance before the Mediation Centre or before this Court. The very fact that she chose not to appear before the Mediation Centre and this Court goes to show that she has been intentionally and purposely trying to prolong the litigation between the parties and inflict mental cruelty on the appellant-husband. Her conduct to say the least is reprehensible and during our interaction with her, it was not hard to discern her thinly veiled hostility towards her husband. Under such circumstances, the appellant-husband cannot be expected to live with the respondent-wife and jeopardise his well being as well as the well being of the daughter of the parties. By her own conduct, the respondent-wife has brought this divorce upon her. The lament of the appellant-husband is perfectly justified, as noticed in the discussion above.

As a sequel to the above, the judgment & decree of the Ld. Court below are reversed. The appellant-husband succeeds in his petition under Section 13 of the Act and a decree of divorce is granted. The marriage between the parties stands dissolved. The appellant-husband will deposit a sum of ₹ 7.00 lakhs as per

the terms of the affidavit dated 18.07.2019 filed by him, as permanent alimony in the account of the respondent-wife, within a period of one month from the date of this order. Decree-sheet be prepared accordingly.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

August 29, 2019

J.Ram

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