

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

**FAO-M-1 of 2018 (O &M)
Decided on : December 06, 2019**

Aman Singla

..... Appellant (s)

Versus

Alka Mittal

..... Respondent (s)

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present : Mr. P.S. Dhaliwal, Advocate
for the appellant.
Mr. Rakesh Bakshi, Advocate
for the respondent.

KARAMJIT SINGH, J.

The instant appeal has been preferred by the appellant-husband impugning the judgment and decree dated 28.09.2017, passed by the Learned Additional Civil Judge (Sr. Division), Yamuna Nagar at Jagadhari (hereinafter referred to as the 'Ld. Court below'), whereby, the petition filed by the appellant-husband under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for Restitution of Conjugal Rights, was dismissed.

A few facts necessary for adjudication of the case, as narrated in the petition filed by the appellant-husband before the Ld. Court below, may be noticed. Marriage between the parties was solemnized on 15.06.2012 at Patiala as per Hindu rites and ceremonies. After the marriage, the parties resided and cohabited together as husband and wife and out of the wedlock one male child was born on 16.03.2013, who is at present in the care and custody of the respondent. It was a simple marriage and nothing was given

to the appellant-husband in the shape of dowry. On 23.06.2013, the mother of the respondent misbehaved the appellant-husband and took the respondent forcibly while taking all the ornaments, which were given at the time of the marriage. So, ultimately in the month of June, 2013 respondent-wife left the company of appellant-husband without any reasonable cause. Efforts were made for reconciliation, but all in vain.

Per contra, in the reply filed by the respondent-wife, she admitted the factum of marriage having been solemnized between the parties and also the birth of a male child out of their wedlock. However, she submitted that her parents had spent approximately Rs.8.00 lakh on her marriage and given enough dowry at the time of marriage. It was also averred by her in the written statement that family members of her husband were not happy with the dowry articles given in the marriage and kept taunting her with further demand of more jewellery. When demands raised by the appellant's family were not fulfilled then the respondent-wife was beaten and on 23.01.2013, she was turned out of the matrimonial house. Upon this, Panchayat was also convened by her parents and some settlement was done but she continued to reside at her parental house. Thereafter, she gave birth to a male child and she was again taken back to the matrimonial house by her father-in-law alongwith her child on 01.05.2013 but even after that behaviour of the appellant's family towards her remained cruel. So, she gave an application at Police Station Tripuri, Patiala but the matter was compromised on 23.06.2013 and again she came back to matrimonial house alongwith minor son. On 01.07.2013, the appellant's family members gave her beatings and turned her out of the matrimonial house and the matter was again reported to the police on 04.07.2013, but no action was taken.

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

- “1. *Whether the respondent had a reasonable cause to withdraw from the society of the petitioner? OPR*
2. *Whether the petition of the petitioner is not maintainable? OPR*
3. *Whether the petitioner is entitled to restitution of conjugal rights? OPP*
4. *Relief.”*

The appellant-husband stepped into the witness-box as PW-1 and examined his mother as PW-2 and tendered documents Ex.P-1 to Ex.P-9 closed his evidence. On the other hand, the respondent-wife in order discharge her onus examined herself as RW-1 and her evidence was closed by the Trial Court on 29.04.2017, since she had failed to conclude the evidence despite availing sufficient opportunities.

Ld. Court below after an appraisal of the evidence, dismissed the petition filed by the appellant-husband, being devoid of merits. Aggrieved by the judgement dated 28.09.2017, the present appeal has been filed by the appellant-husband.

We have heard learned counsel for the parties, perused the evidence and other material on record thoroughly.

Learned counsel for the appellant-husband contended that earlier respondent-Alka Rani took divorce from her first husband vide Judgement and Decree dated 24.07.2006, which are Ex.P-1 and Ex.P-2, respectively. It is further contended that the respondent left the matrimonial home on her own without any reasonable and probable cause in June, 2013 and thereafter she never came back, as is evident from the testimony of PW-1 and PW-2. It is further contended that after June, 2013 efforts were made

by the appellant-husband to bring her back but she refused to accompany him. It is further contended that in these circumstances the appellant is entitled to the decree for Restitution of Conjugal Rights.

On the other hand, the counsel for the respondent-wife submitted that the Ld. Court below has rightly dismissed the petition. The respondent had withdrawn from society of the husband due to reasonable cause. She was persistently harassed by the appellant-husband and other members of his family. They were not satisfied with the dowry brought by her. All of them physically tortured her and thus compelled her to leave the matrimonial home. It is further contended that this appeal deserves to be dismissed.

In the present case appellant-husband failed to substantiate his contention that his wife is staying with her parents without any just cause. The parties got married on 15.06.2012 and they got separated in the month(s) of June/July, 2013. The remedy of restitution of conjugal rights is generally availed by the husbands to strong arm their wives into submitting themselves to their company. No doubt, the law is to provide stability of marriage but at the same time the Court cannot force or order a person into unwanted relation.

There is no doubt regarding the fact that earlier respondent-Alka Rani got married with one Manoj Kumar, who later on got divorce from her under Section 13 of the Act, vide judgement (Ex.P-1). The fact regarding the first marriage of the respondent-wife was within the knowledge of the appellant-husband, when he got married with respondent-Alka. It was an arranged marriage. It has also come on the record that respondent-wife lodged complaint with the police regarding ill-treatment by her husband and in said proceedings before the police, the appellant-husband

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gave his affidavit, whose copy is Ex.P-3. The respondent wife has also filed application under Section 125 Cr.P.C. and separate complaint under the Domestic Violence Act alleging therein that she was subjected to cruelty by her husband and his parents. All the said matters are still pending in the Learned Lower Court.

In the facts and circumstances of the case, it appears that the appellant/husband had tried to coerce the respondent-wife to live with him, by filing this petition under Section 9 of the Act. So the Ld. Court below has rightly dismissed the petition.

As a sequel to our aforesaid discussion, this appeal fails and is hereby dismissed being devoid of merits.

(RAJAN GUPTA)
JUDGE

December 06, 2019
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(KARAMJIT SINGH)
JUDGE

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