

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

FAO-M-88-2018
Decided on : 30.10.2019

Suman

..... Appellant

Versus

Ashok

..... Respondent

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

Present : Mr. Bhim Singh, Advocate
for the appellant.

None for the respondent.

Rajan Gupta, J.

Appellant Suman preferred a divorce petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') before the court below alleging cruelty. The plea was rejected by the court below resulting in this appeal.

Brief factual background of the case is that the marriage between the parties was solemnized on 10.12.2010 at village Kharal as per Hindu rites and ceremonies. No child was born out of the said wedlock. Appellant-wife alleged that her parents spent huge amount at the time of marriage. She later discovered that her husband was a drug addict and drunkard. The respondent-husband gave merciless beatings to her under the influence of liquor. She was also taunted for not bringing sufficient dowry. This forced her to file a complaint against the respondent-husband and his family members under Sections 498-A, 406 and 506 IPC.

Upon notice, respondent-husband filed his reply and denied all her pleas.

In support of her case, the appellant-wife herself stepped into the witness box as PW-1 and examined two other witnesses. She produced several documents on record. Likewise, respondent-husband also stepped into the witness box as RW-1 and reiterated the stand taken by him in the reply. Two other witnesses appeared in his support.

After considering the entire issue, trial court came to the conclusion that the appellant-wife had not been able to prove that she had been subjected to cruelty and thus, rejected the divorce petition. The instant appeal emanates from the said order.

During the pendency of this appeal, vide order dated 06.08.2018 respondent-husband was directed to pay Rs.25,000/- as litigation expenses. However, he failed to comply with the said order despite number of opportunities, as a result vide order dated 28.02.2019, his defence was struck off.

Learned counsel for the appellant has relied upon the judgment reported as **2011 (6) RCR (Civil) 87** titled as **Baljit Kaur vs. Jasvir Singh** to contend that in case maintenance pendente lite as ordered by the Court is not paid by the husband, his defence would be liable to be struck off and appeal filed by the wife would be allowed. The relevant paragraphs of the said judgment are reproduced as below:

“10. Admittedly, the respondent has not paid the maintenance pendente lite and litigation expenses as ordered by this court on 20.10.2009. A period of more than one year has elapsed but till date he has not paid

even single penny to the appellant wife. He has also not paid maintenance before the court below. He has not even filed any appeal against the aforesaid order fixing maintenance. The person who is disobeying the order of the court, cannot be allowed to be heard on merits. Since, the respondent has not complied with the order passed by this court on 20.10.2009, his defence is struck off.

11. The guidance as to how to proceed further in such circumstances is available from the judgments referred to above. It has been consistently opined that after the striking off defence of the husband on account of non-payment of maintenance, the wife's allegations in the petition are to be taken as correct or the husband cannot be permitted to be heard on merits. And the court can accept the plea of the wife. Consequently, the appeal filed by the wife is allowed and the divorce petition filed by her is accepted by passing a decree of divorce in her favour. Decree-sheet be prepared.”

Apart from the said judgment, ***Rashwinder Kaur vs. Ravinder Pal Singh, 2013 (1) HLR 483*** is on the similar lines.

Under the circumstances, we are left with no option but to allow the appeal. Consequently, the marriage between the parties is dissolved by way of decree of divorce. Decree-sheet be prepared.

(RAJAN GUPTA)
JUDGE

30.10.2019
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No