

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

FAO-893-2015 (O&M)

Decided on : September 24, 2019

Manoj Kumar

..... Appellant

Versus

Deepali Sharma

..... Respondent

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

Argued by : Mr. Gautam Dutt, Advocate
for the appellant.

Mr. Munish Soni, Advocate
for the respondent.

Manjari Nehru Kaul, J.

CM-2444-CII-2015

This is an application under Section 5 of Limitation Act for condonation of delay of 11 days in filing the appeal.

For the reasons mentioned in the application, delay of 11 days in filing the appeal is condoned.

CM stands disposed of.

Main case

The instant appeal has been preferred by the husband– Manoj Kumar impugning the judgment and decree dated 09.12.2014 passed by District Judge, Family Court, Gurugram whereby the petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (for short 'the Act') filed by him was dismissed.

2. Few facts necessary for adjudication of the instant appeal as

pleaded in the petition filed by the appellant-husband before the learned Court below may be noticed.

Marriage between the parties was solemnized on 08.02.2002 as per Hindu rites and ceremonies. Parties cohabited together as husband and wife and two children were born out of the said wedlock on 22.10.2003 and 30.09.2005. According to the appellant-husband, the respondent-wife was ill tempered and of a quarrelsome nature. She was totally under the influence of her parents. She would be most of the time frequenting the house of her parents and would return to the matrimonial home only on being implored by the appellant-husband. Her behaviour towards the appellant-husband was one of total indifference to the extent that she did not even bother to nurse him when he was hospitalised. She shirked her matrimonial obligations and would often misbehave with the appellant-husband in front of one and all. She would be on the phone most of the time talking to unknown persons by using different mobile sim numbers. Despite earnest efforts made by the appellant-husband, the respondent-wife refused to mend her ways. On 10.05.2010, she left the matrimonial home leaving behind her two children. The parties then decided to file a petition under Section 13-B of the Act on 23.07.2011. The appellant-husband made part payment of Rs.1 lakh vide cheque dated 23.07.2011 out of the total amount of Rs.2 lakhs agreed upon between the parties. However, at the time of recording the statement at second motion, the respondent-wife refused to make a statement. She instead threatened to implicate the appellant and his family in false cases. He thus, prayed for dissolution of their marriage by a decree of divorce.

3. Per contra, the respondent-wife by way of her written statement filed before the Court below refuted and categorically denied the allegations of the appellant-husband. She submitted that about Rs.15 lakhs were spent on the wedding. She would be frequently harassed by the appellant-husband for more dowry. She alleged that during her pregnancy she was physically abused and not taken care of by the appellant-husband as a result of which she went into the depression and taking advantage of the same, her husband got her to sign on blank papers. Thereafter she was taken to the District Court, Gurugram and was made to forcibly sign and give a statement for divorce by mutual consent. She somehow managed to inform her parents about the same before the second motion could be recorded. Due to this fact, she was physically assaulted and turned out of her matrimonial home. She had not even been permitted to meet her children ever since then.

4. From the pleadings of the parties, following issues were framed by the learned trial Court:

1. Whether the petitioner is entitled for a decree of divorce on the grounds as mentioned in the petition?

2. Relief.

5. Both the parties adduced evidence in support of their respective stands. The appellant-husband himself stepped into the witness box as PW-1. Besides him, he examined his father Mahadev Sharma as PW-2 and tendered all the relevant documents. On the other hand, respondent-wife herself stepped into the witness box as RW-1.

6. The trial Court after analyzing the evidence led by the parties,

dismissed the petition filed by the appellant-husband by holding that the appellant-husband could not prove the allegations of cruelty and desertion against the respondent-wife.

7. We have heard learned counsel for the parties and perused the evidence as well as other material available on record.

8. Admittedly, there have been no conjugal relations between the parties ever since the respondent-wife left her matrimonial home in 2010. The parties have been reiterating their allegations against each other. A criminal case too was filed by the respondent-wife against the appellant-husband, which has soured the relations between them to a point of no return. It is very apparent that the parties are mentally incompatible.

9. Further, the allegations of appellant-husband that he and their children were subjected to cruelty by the respondent-wife, comes across as having some grain of truth in it. It has been admitted by the learned counsel for the respondent-wife that in the last 9 years she had not even once made any effort to move any application for the custody of her children much less seek any visitation rights qua them. This corroborates the case of the appellant-husband that she had been neglecting not only him but also her sons, who admittedly are in the custody of the appellant-husband and are being single handedly raised by him and his family. Needless to say, such kind of behaviour of the respondent-wife would have caused a lot of mental agony to the appellant-husband which the Court below failed to appreciate. Still further, the photographs of the respondent-wife Ex.P-22 to P-25 reveal that the behaviour of the respondent-wife could be termed as unacceptable keeping in view the social strata of society the parties

apparently come from.

10. During the pendency of the instant appeal, the parties were referred to Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement. An affidavit dated 16.09.2019 was also filed by the appellant-husband wherein he undertook to pay an amount of ₹ 7 lakhs to the respondent-wife towards permanent alimony. All efforts made by the Mediation Centre as well as by this Court to bring about a amicable settlement between the parties have miserably failed.

11. In these circumstances, it would be unrealistic to expect the parties to reconcile and live together as husband and wife. Consequently, the appeal stands allowed and the impugned judgment dated 09.12.2014 passed by the Court below is set aside. The marriage between the parties stands dissolved by a decree of divorce. Decree sheet be prepared accordingly. The appellant-husband shall however, remain bound by the said affidavit, which already stands taken on record and pay an amount of ₹ 7 lakhs to the respondent-wife towards permanent alimony within a period of six weeks from the date of this order.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

September 24, 2019

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Whether speaking/non-speaking:
Whether reportable :

Yes/No
Yes/No