

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

**IOIN-CMM-9-2016 in/&
FAO-M-29-2016 (O&M)**

Date of decision : 07.11.2019

Sarabjit Kaur

....Appellant

V/s

Jaswinder Singh

....Respondent

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

Present: Mr. Puneet Kumar Bansal, Advocate for the appellant.

None for the respondent.

RAJAN GUPTA J.

With the consent of learned counsel, main appeal is taken up for hearing today itself.

Appellant-Sarabjit Kaur has filed the present appeal against the judgment and decree dated 01.10.2015 passed by District Judge, Ferozepur whereby her petition under section 13 of the Hindu Marriage Act, 1955 seeking dissolution of marriage has been dismissed. The marriage between the parties was solemnized on 14.12.2010 at village Amir Shah, Tehsil Zira, District Ferozepur as per Sikh rites and ceremonies. The parties cohabited as husband and wife. No child was born out of the said wedlock. Appellant-wife alleged that her parents spent around ₹4.00 lacs at the time of marriage and sufficient dowry articles were given. However, the behaviour and attitude of respondent and his family members remained rude since marriage. She later discovered that her husband was a drug addict. He used to give beatings and turned her out of matrimonial house at odd hours on

various occasions. Respondent-husband did not even hesitate to insult her in the presence of friends and relatives. According to her, she kept on bearing all these insults in order to save her matrimonial life. Upon notice, respondent-husband denied all her pleas in his written statement. According to him, the appellant-wife was not ready to reside with him and had concocted a false story. In support of her case, appellant-wife herself stepped into witness box as PW1 and had examined her mother as PW2 and one other witness. On the contrary, respondent also stepped into the witness box as RW1 and examined two other witnesses. After considering the entire issue, the court below came to the conclusion that appellant-wife had not been able to prove that she had been subjected to cruelty. Her plea of desertion had also not been proved. It, thus, reject the divorce petition. Present appeal emanates from the said order.

During the pendency of this appeal, vide order dated October 27, 2017, respondent-husband was directed to pay ₹20,000/- as litigation expenses and a sum of ₹3,000/- was awarded as maintenance pendente-lite from the date of application. However, he failed to comply with the said order. As a result vide order dated 23.03.2018, 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

November 07, 2019
Ajay

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No