

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

**FAO-M-153-2017 (O&M)
Decided on : 17.01.2020**

Harish Taneja

... Appellant(s)

Versus

Nidhi

... Respondent(s)

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

Argued by: Mr. Viraj Gandhi, Advocate
for the appellant(s).

Mr. Ashwani Talwar, Advocate with
Ms. Swati Arora, Advocate, for the respondent(s).

MANJARI NEHRU KAUL, J.

Instant appeal has been preferred by the husband – Harish Taneja, against the judgment and decree dated 27th January, 2017, passed by the Ld. District Judge, Panchkula, (in short 'Ld. Court below'), vide which the petition filed by him, under Section 13(1) (i-a)(i-b) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), seeking dissolution of his marriage with the respondent-wife/Nidhi, was dismissed.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the appellant-husband (petitioner therein) before the Ld. Court below, may be noticed.

The marriage between the parties was solemnized on 24th February, 2004 according to Hindu rites and ceremonies. One son was born out of the said wedlock on 30th January, 2005. The parties after their marriage resided at Delhi with the appellant-husband's brother and mother.

The behaviour of the wife was cruel towards her mother-in-law with whom

she would often misbehave. She would even use unparliamentary language against the husband which caused him a great deal of mental pain, agony and embarrassment. There was also a lot of interference by her parents and on their insistence she would pressurize the appellant-husband to claim his share in the property and move out of the house. He kept up with her uncalled for and nasty behaviour in the hope that better sense would prevail upon her but in vain. The wife even threatened to abort the foetus when she was expecting their child. Their child was delivered at Panchkula, even though the husband had got all arrangements made for the delivery of the child at Delhi. It was alleged that the wife neglected the new born baby by not nursing him as she felt that it would lead to body disfigurement and as a result of which, the child contracted infections and medical complications. When the son's mundan ceremony was to be performed, the wife did not even bother to inform him about the same, which naturally caused him immense agony. On 25th December, 2005, when the husband went to her father and tried to catch wind about the reason behind her indifferent and callous behaviour, he was informed that she was under psychiatric treatment and would recover in 6 to 12 months. However, her behaviour only worsened with the passage of time. On 23rd February, 2006, she left her matrimonial home with her father after collecting all her belongings. Despite the consistent and earnest efforts of the appellant-husband to iron out their differences, there was no success. On the contrary, he was threatened with dire consequences. The appellant-husband pleaded that he had been deserted by her w.e.f. 23rd February, 2006 and all his endeavours to reconcile had bitten dust. His marriage with the respondent-wife be thus dissolved on the grounds of 'desertion' and 'cruelty'.

Per contra, in the written statement filed before the Ld. Court below, the wife categorically refuted and denied all the allegations made by the husband in his petition. She pleaded that the allegations of cruelty levelled against her were vague, frivolous and ill-founded, as no specific dates, much less, details had been given by the appellant-husband in his petition. She submitted that she was justified in living separately, as the demands for dowry and ill-treatment meted out to her by the husband and his family were insufferable. She alleged that her mother-in-law would not even provide her with the basic household items like oil and soap as she would keep everything under lock and key. She claimed that she had been a dutiful and respectful daughter-in-law, who performed all her marital obligations with utmost diligence. She denied that the appellant-husband had made repeated and earnest efforts to reconcile. Rather, she alleged that he had inflicted cruelty upon her as he did not even bother to provide her with the care as advised by the Doctor during her pregnancy. In fact, it was the husband himself, who had left her at her parental house for the delivery of the child and thereafter refused to take her back. He did not even bear the expenses of the delivery of the child. Even though the husband's family were informed about the mundan ceremony of their son, they did not attend it on the pretext of some urgent work. Thus, in the given facts and circumstances, it was submitted that the husband was not entitled to decree of divorce and she accordingly prayed for dismissal of his petition.

After the framing of the issues by the Ld. Court below, both the parties adduced evidence in support of their respective stands. The appellant-husband examined himself as PW-1, besides examining one other witness Varinder Kumar, a friend of his brother as PW-2. On the other

hand, the wife stepped into witness-box as RW-1, besides examining two other witnesses including her father.

After analyzing the evidence led by the parties, the Ld. Court below dismissed the petition under Section 13 of the Act filed by the appellant-husband.

We have heard learned counsel for the parties and have also gone through the evidence and other material on record.

During the pendency of the instant appeal, the parties were referred to the Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement, but the same proved to be a futile exercise. It may also be noticed that the parties during the arguments reiterated their earlier versions and maintained their respective stands, as taken before the Ld. Court below. The respondent-wife reiterated her willingness to return to the matrimonial home.

For proving 'cruelty' and 'desertion', the same would have to be inferred from the facts and circumstances of each individual case, as to whether, the cruel conduct and intention of the erring spouse was such making it impossible for the wronged spouse to live together. Adverting to the instant case, it is apparent that the husband has just made general and vague allegations against the wife. Merely by pleading that the wife had subjected him to cruelty and further not substantiating his allegations of alleged cruelty by any cogent, much less, convincing evidence, would not be enough to presume that the marriage between the parties had broken down beyond repair. No doubt, the husband placed on record the medical history and treatment of his mother, but that by itself would not be sufficient to substantiate his allegations of cruel and uncalled for behaviour towards

him and his mother by the respondent-wife. Even assuming for the sake of arguments that there had indeed been occasional disagreements and flare-ups between the spouses and his mother, at best they could be said to be trivial domestic disputes which do happen in every marriage. Further, the allegations of the appellant-husband that there was lot of interference from the side of the wife's parents or she did not cook meals for him and often indulged in rude and unwarranted behaviour, in the absence of any convincing evidence on record, cannot be accepted. The husband went to the extent of alleging that the respondent-wife was suffering from mental ailment, for which the least that he could have done was to lead some evidence. In fact, it is the husband, who comes across as being cruel by levelling unsubstantiated allegations against the wife and guilty of shirking his duties towards the wife. On a cumulative analysis of all the evidence led, it is very apparent that the husband is himself responsible for creating circumstances forcing the respondent-wife to stay away from the matrimonial home. It is not hard to discern that the respondent-wife along with the child had been left at her parental home and where, she had been compelled to live due to the circumstances created by none other than the appellant-husband. It is the husband, who comes across as the erring party and guilty of “constructive desertion”. It is not the case of the husband that he made any efforts for bringing the respondent-wife back to the matrimonial home by filing any petition under Section 9 of the Act. The contention of the learned counsel for the appellant-husband that the respondent-wife had intentionally deserted her matrimonial home, as she had got a job in Chandigarh deserves to be rejected outrightly. No doubt, she did get a job and as per her own admission, she is working, but the fact

remains that she picked up the job only, after she had been left with no other choice but to fend for herself and her child in the absence of any support from the appellant-husband. Admittedly, the respondent-wife did not even file any criminal case(s) against the appellant-husband or his family.

As a sequel to the above, we find that no interference in the judgment passed by the Ld. Court below is called for, as the same is a well reasoned one. Consequently, the present appeal stands dismissed and the judgment and decree dated 27th January, 2017 of the Ld. Court below, is upheld.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

January 17, 2020

J.Ram

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