

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6283 of 2019

Date of Decision: 30.01.2020

Jagga Singh

.....Petitioner

Vs.

Rekha Rani

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Rajesh Lamba, Advocate, for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order of the learned Additional District Judge, Fatehabad, dated 05.04.2019, by which the decree issued by the learned trial court, i.e. the Additional Civil Judge (Senior Division), Ratia, dated 24.09.2018, in favour of the petitioner herein, in a petition filed by him under Section 9 of the Hindu Marriage Act, 1955, was reversed.

Thus, that judgment and decree having been reversed, that petition of the present petitioners' filed under the aforesaid provision, has been dismissed.

The trial court, in its judgment leading to the aforesaid decree, had held that with the petitioners' case being that the respondent, i.e. his wife, had withdrawn from the society of the petitioner without any reasonable excuse, with her residing at Budhlada, District Mansa (Punjab), with the petitioner posted as a bank employee at Ratia, District Fatehabad, she had so withdrawn from his society without any reasonable excuse, thereafter holding that the onus was on the respondent-wife to prove that she had any such reasonable excuse to withdraw from the petitioners' society.

The case of the respondent, as noticed by the learned trial court, was

that the petitioner had in fact left her company to reside with a woman at Ratia and that he had no love and affection either for her or their children. However, the aforesaid contention had not been substantiated by her by giving any name and address of any such woman and therefore she had not discharged the onus cast upon her in terms of Section 103 of the Indian Evidence Act, 1872.

Consequently, a decree of restitution of conjugal rights was issued in favour of the petitioner by the trial court.

The appellate court on the other hand, after noticing the above facts, observed that the case of the petitioner was that the parties resided together at Ratia after the marriage and six months prior to the filing of the petition, after which the respondent-wife left his company and went to Mansa to her parental house, without any reasonable cause.

The respondent-wife, on the other hand, pleaded that she had been continuously residing with the petitioner and at his place of posting and that they last resided together at Budhlada for about 10 years, after which the petitioner herein (respondent in the appeal), left her company and started residing at Ratia.

It was found by the appellate court that the petitioner, in his cross-examination, had admitted that the parties had in fact lived together at Patiala from 1993-2000 where he was posted, after which he was transferred to Budhlada where he resided with his wife till 13.10.2013.

He had constructed a house at Budhlada after taking a loan and had resided with the respondent and their children in that house, with the children also admitted to school at Budhlada, where he was paying their school fee.

He was also in fact found to have admitted that he and the respondent were not residing at Ratia and that she had filed a petition under the provisions of the Protection of Women from Domestic Violence Women Act, 2005, against him,

prior to his having instituted the suit in the present *lis*.

He had also admitted that he had never gone to Budhlada to meet his children.

Upon the aforesaid evidence, the appellate court came to the conclusion that in fact it was the petitioner who had concealed material facts, to the effect that the parties were earlier residing at Patiala together for six years and then at Budhlada for 13 years, where he had also constructed a house and though in his petition he had stated that the parties resided at Ratia only, from where the respondent had left their home to go to her parental house at Mansa, he had contradicted himself in his cross-examination.

Hence, it was held that it was never substantiated that the respondent wife had ever resided with him at Ratia and had then left his company.

Even the testimony of the other witness examined by the petitioner, i.e. PW-2 Ramesh Kumar, did not actually state that the parties resided together (at Ratia), with actually the petitioner residing at Ratia subsequently, and the respondent residing at Budhlada.

It was next found by that court that the major son of the parties, i.e. Shishpal DW-2, had also deposed in favour of his mother and that in fact the parties had last resided together at Budhlada, in the house raised by the petitioner.

Next recording that in fact the petitioner had challenged the awarding of maintenance to the respondent and his minor daughter in proceedings under Section 125 of the Cr.P.C., arguments advanced in those proceedings were found to be also contradictory to the stand taken by the petitioner in the present *lis*.

Hence, holding that in fact the petition under Section 9 of the Act of 1955 had been filed as a counter-blast to the petition filed by the respondent under the provisions of the Protection of Women from Domestic Violence Women Act,

2005 and to her petition under Section 25 of the Cr.P.C., it was held that the present petitioner was guilty of concealment of material facts, with him also not having proved that the respondent had withdrawn from his company (at Ratia), after they had been residing there together.

Consequently, on the aforesaid grounds, the appeal of the respondent-wife is allowed, with the petition filed by the petitioner dismissed, thereby reversing the decree issued by the trial court.

Before this court, Mr. Lamba, learned counsel for the petitioner, despite submitting very vehemently that the appellate court has wholly erred in reversing the finding of the trial court, however, has not been able to factually show before this court as to how the findings of the appellate court are perverse in any manner, as regards even material concealment of facts by the petitioner, as revealed in his own cross-examination with regard to where the parties last resided together; and as to how, when the respondent-plaintiff was never ever found to have resided at Ratia with him at all, she could have been accused of having left his company at Ratia, whereas she continued residing at the place where they had last resided together at Budhlada where the petitioner in fact had constructed a house and had also been paying the school fee of his children.

In view of the above findings of the learned appellate court, no perversity, or even error, in the judgment of that court having been found, I find no ground to entertain this petition, which is consequently dismissed *in limine*.

January 30, 2020
nitin/dinesh

Whether speaking/reasoned
Whether Reportable

(AMOL RATTAN SINGH)
JUDGE

Yes
Yes