

FAO-319-2021 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-319-2021 (O&M)

Date of Decision: 25.03.2021

Sonia

...Appellant

Versus

Sunil Kumar @ Sunny

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. P.K. Ganga, Advocate,
for the appellant.

AUGUSTINE GEORGE MASIH, J.

This appeal has been filed by appellant – Sonia (wife of respondent) challenging judgment and decree dated 27.01.2021 passed by the Principal Judge, Family Court, Sirsa, whereby a petition under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights filed by her was dismissed.

2. Briefly, the facts of the case are that the marriage between appellant – wife Sonia with respondent – husband Sunil Kumar @ Sunny was solemnized on 13.07.2016 at Gurudwara Kalangidhar, Mandi Dabwali, District Sirsa, according to the Sikh rites and ceremonies. This was the second marriage of both the parties. After the marriage, respondent as well as his family members started taunting the appellant for bringing less dowry and demanding ₹ 8,25,000/-, which she had received as maintenance from

her first husband in a divorce petition. On 25.08.2016, she was confined in a room and threatened to bring ₹ 8,25,000/- and her share in the parental property despite she being pregnant with a threat that if the demand is not fulfilled, she would be given divorce. On 02.11.2016, respondent left the appellant in her parental house without any reasonable cause or excuse, rather she was threatened that in case, she initiated any action against him or his family members, she as well as her family members would be implicated in false cases. A panchayat was convened at the behest of the appellant for an agreement so that she could go back to her matrimonial home for residing with the husband which did not succeed leading to the filing of the petition under Section 9 of the Hindu Marriage Act, 1955.

3. Respondent appeared before the Court and filed written statement, wherein he admitted that it was the second marriage of both the parties. He also admitted that he had a daughter aged four years from his first marriage. The allegations made by the appellant were all denied by the respondent, rather counter-allegations were made that his daughter from first marriage was beaten, maltreated and tortured both physically and mentally by the appellant, because of which she started remaining ill. Assertion has also been made that the appellant had left her matrimonial home without any intimation to the respondent and that she was a quarrelsome lady. It was stated that the respondent and the appellant were residing separately at Kallanwali and therefore, question of harassment on the part of his family members does not arise. On 02.11.2016, it was the mother of the appellant, who had taken her to Dabwali and thereafter, she

refused to come back to her matrimonial home.

4. After the framing of the issues on 05.08.2017, order dated 14.03.2018 was passed by the court under Section 24 of the Hindu Marriage Act, 1955, directing the respondent to pay ₹ 5,000/- per month to the appellant from the date of the application. Since the respondent failed to pay the maintenance amount, his defence was struck off.

5. Appellant appeared in the witness-box as PW-1 and also examined her father Dalip Kumar as PW-2. The Court, thereafter, on the basis of the evidence led by the appellant proceeded to decide the petition against her. Finding was returned that the appellant had failed to establish any cruelty or dowry demand in the criminal proceedings, which were initiated against the respondent and his family members as the complaint filed by her stood dismissed. Apart from that, her evidence as well as her father's evidence did not establish the fact that the respondent had withdrawn from the society of the appellant without any reasonable excuse, rather it was concluded that the appellant had herself withdrawn from the society of the respondent. With the dismissal of the petition under Section 9 of the Hindu Marriage Act, 1955, vide order dated 27.01.2021 by the Family Court, Sirsa, the present appeal has been filed challenging the said order.

6. Learned counsel for the appellant submits that the Court below has failed to appreciate the evidence, which has been led by the appellant in the right perspective. It has been duly proved on the basis of the evidence that the respondent has withdrawn from the society of the appellant. He

asserts that the Court below has ignored the pleadings and the evidence led by the appellant and has given undue weightage to the aspects which were not relevant. The effort on the part of the appellant was to restore the society and company of the respondent and was making all efforts to save her matrimonial life as she wanted to reside with her husband. The findings which have been recorded are wrong and perverse on the face of it and therefore, the impugned order dated 27.01.2021 deserves to be set aside.

7. We have heard the learned counsel for the appellant and with his assistance have gone through the records of the case.

8. Section 9 of the Hindu Marriage Act, 1955, reads as follows:-

“9 Restitution of conjugal rights. - When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

[Explanation. - Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]”

A perusal of the above section would show that when any of the spouse has withdrawn from the society of the other but without reasonable excuse, the said aggrieved party could approach the Court for restitution of conjugal rights. The duties cast upon the Courts are to find

out the truth of the statement made in such petition and then to see that there is no legal ground for the application being not granted. It is, thereafter, when the Court is fully satisfied on these aspects, then and only then the decree of conjugal rights may be passed. Explanation to this Section is very important, which cast the burden of proof of reasonable excuse for withdrawal from the society, on the person who has withdrawn from the society.

9. Since the present petition has been filed by the appellant and on the basis of the pleadings, the onus was upon the appellant, who had left her matrimonial home, to prove that there was reasonable excuse to move away from the society of the respondent. This onus, in the considered view of this Court, has not been discharged by the appellant. The reason for saying so is germane from the statement of the appellant herself, who appeared in the witness-box as PW-1. She has deposed that her first marriage was solemnized in the year 2015 and within 10-15 days, she returned from her first matrimonial home and obtained a decree of divorce by mutual consent on 25.04.2016 and also got ₹ 8,25,000/- as maintenance. The second marriage took place on 13.07.2016 within a period of three months from the date of divorce from her first husband. As per the allegations, she was confined in the room while she was pregnant on 25.08.2016 as she has not brought sufficient dowry with a demand of the maintenance amount, which she received from her first husband. She asserts that she has been thrown out of the matrimonial home on 02.11.2016.

10. It is really strange because as per her statement, appellant filed

a petition under the Protection of Women from Domestic Violence Act, 2005, on 21.11.2016, petition under Section 9 of the Hindu Marriage Act, 1955, on the very next day i.e. 22.11.2016 and a month after that on 23.12.2016, a complaint under Section 498-A, 406, 506, 323 and 452 of the Indian Penal Code was instituted by the appellant against the respondent and seven other members of his family. This sequence of events belies the stand of the appellant that she was always ready and willing to keep and maintain the respondent with love and affection and wanted to reside with him. The conduct of the appellant pushing the respondent into multiple litigation, at the same very time when she was bringing a petition for restitution of conjugal rights, does not augur well to accept her assertion that she was always ready and willing to reside with the respondent and had not withdrawn from the society of the respondent. None of the ingredients required to be fulfilled as laid down under Section 9 of the Hindu Marriage Act, 1955, has been established by the appellant, which would persuade this Court even *prima facie* to accept the *bona fides* of the appellant. The conduct of the appellant reflects upon the intent and purpose for which multiple litigations were initiated by her.

11. It would not be out of way to mention here that the criminal complaint filed by the appellant under Section 498-A, 406, 506, 323 and 452 of the Indian Penal Code was not only dismissed after recording the preliminary evidence but even without framing of any charges, vide order dated 10.09.2018 (Ex.D-1). Petition filed by the appellant under the Protection of Women from Domestic Violence Act, 2005 has also been

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dismissed.

12. The findings, therefore, as recorded by the Principal Judge, Family Court, Sirsa, vide order dated 27.01.2021 cannot be faulted with as the same are based upon proper appreciation of the pleadings and the evidence available on record. There is no perversity or illegality in the impugned order dated 27.01.2021, which would call for interference of this Court.

13. In view of the above, finding no merit in the present appeal, the same stands dismissed.

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In the light of the dismissal of the main appeal, no orders are required to be passed in the present application for stay and therefore, the same is disposed of as infructuous.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

25.03.2021*Harish*

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