

(Proceedings through V.C.)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 549 of 2021 (O&M)

Date of Decision:10.08.2021

Deepak Gupta

...Appellant

Versus

Neha Chauhan

... Respondent

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Anmol Puri, Advocate
for the appellant.

ASHOK KUMAR VERMA, J.

CM No.5371-CII-2021

1. This is an application for condonation of delay of 10 days in filing the appeal. For the reasons recorded therein, CM is allowed and delay of 10 days in filing the appeal is condoned.

FAO No.549 of 2021

2. This appeal arises out of the judgment and decree dated 03.02.2020 passed by the Principal Judge, Family Court, Patiala whereby petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') for grant of a decree of divorce against respondent-wife was dismissed.

3. Learned counsel for the appellant, *inter alia*, submits that the learned trial court has grossly erred in dismissing the aforesaid petition of the appellant. Learned counsel submits that the evidence led by the appellant before the trial court remained uncontroverted, since filing the petition under Section 13 of the Act, the respondent-wife remained absent during the proceedings even after service through publication and she was proceeded against ex-parte vide order dated 03.12.2019. It is contended by the learned counsel that the petition for divorce was filed on the grounds of 'cruelty' and 'desertion' against respondent-wife who is said to be a high handed lady of adamant and dictatorial nature and her acts have caused 'cruelty', harassment and mental pain and agony to the appellant making it impossible for him to continue the bond of marriage with her. It is further contended by the learned counsel that after reaching Canada, respondent-wife used to pick quarrel with the appellant on petty matters and deserted him on 01.08.2018 without any reasonable ground. Learned counsel submits that the respondent-wife also harassed the appellant as on 10.03.2018 a false complaint was got registered by the respondent-wife against the appellant and he was arrested by the police and later on he was acquitted in that false case. In support of his submissions, learned counsel for the appellant relies upon the judgments *K. Venkataramiah v. A. Seetharama Reddy and others*, 1963 AIR (SC) 1526, *Satvir Kaur v. Parminder Singh*, (P&H DB), Law Finder Doc Id # 781841 and *Chunilal Ojha V. Mul Shankar Ojha and others*, 1961 AIR (Orissa) 169.

4. We have considered the submissions of the learned counsel of the appellant and have gone through the paper-book.

5. We do not find any substance in the submissions of the learned counsel for the appellant. Undisputedly, the petition for grant of divorce under Section 13 of the Act has been filed through the special power of attorney Munish Kumar on the ground that appellant-husband, Deepak Gupta is residing in Canada and is unable to come to India. It is also not disputed that after filing of the petition under Section 13 of the Act, the appellant did not step into the witness box to prove the allegations of cruelty, harassment and desertion. The trial court rightly came to the conclusion that the allegations levelled in the petition with regard to cruelty are general in nature and such general and bald assertions are not enough to establish the factum of 'cruelty' as envisaged under Section 13 (1) (i-a) of the Act. The said allegations are not even supported by any cogent evidence and the witnesses so examined were themselves not present there and even the appellant chose not to appear in the witness box to explain as to how and in what manner respondent wife meted out cruelty to him and deserted him. Moreover, there is also no documentary evidence produced on record to substantiate that the respondent-wife got him arrested in a false complaint case and in that, he was acquitted. The appellant had failed to produce the copy of any such complaint and the order of acquittal before the trial court. The petition for divorce on the ground of desertion was not maintainable at all as the petition was filed on 26.04.2019 and as per the assertions of the appellant himself, the respondent-wife allegedly left the company of the appellant on 01.08.2018, meaning thereby, the statutory period of two years immediately preceding the presentation of the petition, as stipulated under Section 13(1) (ib) of the Act is not fulfilled.

6. The submissions of the learned counsel that the assertions made in the petition and the evidence led by the appellant remained un rebutted as the respondent-wife failed to appear before the trial court even after publication of notice and she was proceeded against ex-parte, are misconceived and misleading. From a perusal of the memo of parties, it appears that the appellant has given the residential address of the respondent-wife at Delhi whereas in the petition for divorce the appellant stated that the respondent-wife reached Canada on 07.07.2017 and on reaching Canada, the respondent-wife used to pick up quarrels with the appellant on petty matters and ultimately on 01.08.2018 she left the company of the appellant and after eight months only, the appellant filed the petition before the Family/trial court on 26.4.2019. Moreover, non-appearance of one of the parties during the entire proceedings before the trial court does not always necessarily entail that an ex parte decree would follow. If the evidence adduced does not support the claim of the petitioner/appellant, the court cannot pass an ex parte decree. There is an obligation on the trial court to appreciate the evidence and to weigh the merits of the case and to consider whether it is a fit case for granting such decree. The trial court cannot shut its eyes and remain a mute spectator in matter of ex-parte proceedings. In this view of the matter, the trial court rightly dismissed the petition of the appellant for divorce. The judgments relied upon the learned counsel for the appellant are on different footings and are not applicable to the facts and circumstances of the present case. Consequently, we find no infirmity, illegality, impropriety, perversity and irrationality in the impugned judgment of the Family/trial court.

7. In view of the above, we find no merit in this appeal which is hereby dismissed. Consequent upon the dismissal of the main appeal, CM No. 5372-CII-2021 which is application under Order 41 Rule 27 of the CPC for production of additional evidence shall stand disposed of accordingly.

(ASHOK KUMAR VERMA) (AUGUSTINE GEORGE MASIH)
JUDGE JUDGE

10.08.2021
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*