

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

FAO-M-234-2016 (O&M)
Date of decision: 14.10.2021

Smt. Gurbaksh Kaur

...Appellant

Vs.

Sita Ram

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Malkeet Singh, Advocate,
for the appellant.

Ms. Sukhpreet Kaur, Advocate,
for the respondent.

Ritu Bahri, J. (oral)

The appellant has come up in appeal against the judgment dated 30.03.2016 passed by the Additional District Judge, Jalandhar (NRI Court), whereby petitioner filed by respondent-husband, Sita Ram, seeking dissolution of marriage by a decree of divorce under Section 13 of the Hindu Marriage Act, 1955, has been allowed.

Marriage of both the parties was solemnized on 21.01.2005 as per Hindu religious rites and ceremonies at Royal Palace, Kapurthala-Sultanpur Road, Dadwindi, District Kapurthala. Out of this wedlock, two daughters namely, Chahat Nijjar and Bhavna Nijjar, were born on 04.11.2006 and 25.09.2009 respectively. At present both the children are residing with their mother (appellant herein). As per the contents of petition under Section 13 of the Hindu Marriage Act, it was mutually agreed

settle in India. However, after two months of the marriage, she left for USA with an assurance to wind up her bag and baggage and to return India in order to join the society of petitioner-husband (respondent herein). In October, 2005, she came to India and during this period, she conceived from the petitioner (respondent). Thereafter, she again left for USA in April, 2006 and gave birth to the first daughter in USA on 04.11.2006. In October, 2008, she along with minor child came to India and both the husband and wife celebrated the birth of their daughter. During this stay, she again conceived. Thereafter, she left for USA in March, 2009 and gave birth to the second daughter on 25.09.2009. The husband remained in touch with the wife (appellant) and requested her to join his society, but she postponed the matter on one pretext or the other. Respondent-husband requested the brother of his wife, namely Sukhwinder Singh alias Bunty to persuade her to return India, but there was no response from him (Sukhwinder Singh). Thereafter, he approached the Gram Panchayat of village, Kahlwan. Brother of his wife was called by the Panchayat and he agreed to ask Gurbaksh Kaur to return India, but despite that she never came to India. She stopped to attend the phone calls of her husband (respondent). Finally, Gurbaksh Kaur told that she did not want to stay in the company of her husband and wanted divorce from him. Again, a Panchayat was convened on 11.11.2021, but all in vain.

Upon notice of the petition under Section 13 of the Hindu Marriage Act, respondent-wife (appellant herein) filed reply taking the plea that she was treated badly by her husband and his family members and on account of cruelty meted out to her, she had gone back to USA. At the time of marriage, it was agreed that Sita Ram-husband would migrate to USA

and for his migration, she (wife) would provide all the documents. After marriage, Gurbaksh Kaur applied for immigration of the husband, but the visa could not be issued and in this backdrop, he became frustrated. During her stay in India, the family members of Sita Ram used to harass her on account of insufficient dowry. During pregnancy of the second child, her husband had openly proclaimed that she should get the child aborted or to leave her matrimonial home. All the allegations levelled by the husband were denied and prayer for dismissal of the petition was made.

From the pleadings of the parties, following issues were framed by the Court below:-

1. Whether respondent has treated the petitioner with mental and physical cruelty? OPP
2. Whether respondent has deserted the petitioner since March, 2009 as mentioned in para no.7 of the petition? OPP
3. Whether the petitioner is entitled for the relief of dissolution of marriage under Section 13 of Hindu Marriage Act? OPP
4. Whether petition filed by the petitioner is not maintainable? OPR
5. Whether petitioner has got no cause of action to file the present petition? OPR
6. Relief.

In order to prove his case, petitioner-husband himself stepped into the witness box as PW-1 and examined Harnek Singh, mediator of the marriage, as PW-2. On the other hand, respondent-wife (appellant herein) examined Santokh Singh (RW-1) and Joginder Singh, Lamberdar (RW-2).

The trial Court, after going through the evidence led by the

parties, gave a finding that the husband had specifically stated on oath that the wife did not allow her children to talk to him and she herself did not attend the phone calls. He had not seen the face of second child since her birth in U.S.A. in the month of September, 2009 in U.S.A. Neither the wife visited India with the child nor she made any effort to show the face of her child to the husband. Every father has a right and curiosity to see his child after his or her birth. But, in this case, the wife did not provide him any such opportunity. Rather, she stopped visiting India, thereby deprived the husband from the company of his children. In this view of the matter, the trial Court held the wife guilty of causing mental cruelty to the husband. Accordingly, issue Nos. 1 to 3 were decided in favour of the husband and against the wife. The divorce petition was held to be maintainable, as the wife had deserted the husband and caused mental cruelty.

Heard, counsel for the parties.

In this case, after issuing notice of motion, an attempt was made to amicably settle the dispute between parties by referring it to the Mediation and Conciliation Centre of this Court. As per report dated 24.01.2017 given by Mr. Deepak Jindal, Mediator, the mediation had failed and the case was sent back to this Court to be decided on merits. On 05.04.2017, learned counsel for the appellant had informed that on account of strict visa formalities, the appellant could not appear before the Mediation and Conciliation Centre. Thereafter, the matter was again referred to the Mediation and Conciliation Centre. As per report dated 13.07.2017 sent by Mr. Lalit Kumar Gupta, Mediator, the appellant did not appear before the Mediation Centre and learned counsel for the appellant had informed that the appellant was not coming to participate in the mediation proceedings.

He requested to send the matter back to the Court. The present appeal was admitted on 12.10.2017. Thereafter, respondent-husband filed an application (CM-7962-CII-2019) for listing the main appeal on merits. Vide order dated 28.05.2019 passed by this Court, a direction was given to the Registry to list the main appeal in the month of August, 2019. Consequently, the case was taken up on 17.02.2020 and on that date, no one had appeared on behalf of the appellant. The Registry was directed to inform learned counsel for the appellant about the next date of hearing. On 12.08.2021, Mr. Malkeet Singh, Advocate, accepted notice of the misc. application (CM-6393-CII-2021) for listing this appeal for final adjudication and on his request, the case was adjourned to 09.09.2021. On 09.09.2021, learned counsel for the appellant had informed that he was not able to get in touch with the appellant or her brother, as both of them were residing abroad. In this backdrop, the case was adjourned to be listed for final hearing in the month of October, 2021.

Reference at this stage can be made to a judgment passed in **Naveen Kohli vs. Neetu Kohli**, 2006 (4) SCC 558, wherein Hon'ble the Supreme Court was considering a case of irretirvable break down of marriage. In that case, wife was living separately for a long time, but did not want divorce by mutual consent only to make life of her husband miserable. Thus, a decree of divorce was granted by holding that it is a cruel treatment and showed that the marriage had broken irretrievably. In para 62, 67, 68 and 69 of the judgment, it has been observed as under:-

“62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in

our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

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67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

69. Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the [Hindu Marriage Act](#), 1955. In the extraordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs.25,00,000/- (Rupees Twenty five lacs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs.5,00,000/- (Rupees five lacs with interest) deposited by the appellant on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant.

Thus, divorce had been granted to the parties, as the marriage between them had broken down irretrievably and there was no chance of their coming together, or living together again. Further, not to grant decree

of divorce would be disastrous for the parties.

A three Judge Bench of Hon'ble the Supreme Court in **Samar Ghosh vs. Jaya Ghosh, 2007** (4) SCC 511, granted divorce on the ground of mental cruelty, but the concept of irretrievable breakdown of marriage had been discussed in detail by referring the 71st report of the Law Commission of India

Further, Hon'ble the Supreme Court in **K. Srinivas Rao vs. D.A. Deepa**, 2013 (5) SCC 266, has observed that although irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, yet marriage which is dead for all intents and purposes, cannot be revived by Court's verdict, if parties are not willing. Marriage involves human sentiments and emotions and if, they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by court decree.

In the present case, the appellant and her brother are now staying abroad. Both appellant-wife and respondent-husband are staying separately since 2009. Almost 12 years have gone by since the parties have not interacted with each other. Moreover, after the birth of second child, the wife had stopped attending the phone calls of her husband (respondent). For all intents and purposes, it is a dead marriage. The appellant is staying in U.S.A. along with her two daughters. She, even, did not appear before the Mediator on two occasions in order to resolve the matrimonial dispute through the process of mediation, which is one of the effective mode of alternative mechanism for resolving the personal dispute.

After going through the impugned judgment, we are of the considered view that finding on cruelty has been rightly given by the

learned Court below after appreciating evidence in the right perspective. The marriage between the parties has now become dead and irretrievable. In view of the above discussion, no ground is made out to interfere in the impugned judgment.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

14.10.2021
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No