

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-14-2021(O&M)
Date of decision 11.11.2022

SHARMILA

...Appellant

V/S

RAJPAL

...Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS JUSTICE MANISHA BATRA

Present: Appellant-wife in person with
Mr. Yogesh Goel, Advocate.

Respondent-husband in person with
Mr. Shakti Mehta, Advocate
as Legal Aid counsel.

Ritu Bahri, J. (oral)

The appellant has come up in appeal to set aside the judgment and decree dated 03.02.2021 passed by the Additional Principal Judge, Family Court, Bhiwani, whereby petition under Section 13 of the Hindu Marriage Act 1955 filed by the appellant-wife has been dismissed.

The marriage of the parties was solemnized on 14.05.2007 at Village Lohani, Tehsil and District Bhiwani as per Hindu rites and ceremonies. One child was born out of this wedlock. The wife was ousted from her matrimonial home on 10.12.2015. Petition was also filed under Section 13B of the Hindu Marriage Act, 1955, for dissolving the marriage on the basis of mutual consent but the same was

dismissed on 21.12.2017 due to non appearance of the respondent-husband. Her petition seeking divorce on the ground of cruelty has been dismissed by the Family Court on the ground that in her affidavit PW1/A she had exaggerated the version in comparison to the version disclosed in the main petition with regard to allegations regarding demand of dowry and harassment. The mode and manner of harassment as well as date of demand of dowry have not been mentioned. However, no complaint was made to the police except filing the petition for divorce. Even father of the appellant admitted in his cross examination that they never made any complaint to the police for alleged demand of dowry. PW3 Mahavir, independent witness, specifically stated in his cross examination that he had attended all the ceremonies of the marriage and only Rs.1/- was demanded by the respondent and his family member. However, subsequently he took a u turn and said demand of dowry was made in all the ceremonies. The abovesaid witness was not taken to be as sufficient ground to give divorce to the appellant and the petition was dismissed. During the pendency of this appeal, while issuing notice of motion on 30.06.2021, it was observed that Section 13B of HMA petition could not be finalised as the husband did not turn up to get his second statement recorded and the child was 12 years old who was being brought by the mother alone. During the pendency of this appeal, the respondent came and appeared in person and was asked to pay maintenance qua the child which came to about Rs.28,000/-. Respondent openly stated that he was unable to pay the amount of maintenance to the child. Keeping in

view the above statement reference can now be made to the judgments passed by this Court where the husband refuses to pay the maintenance to the wife and the child. This Court in **Kiran Bala Bangar vs. Vijay Kumar Bangar, FAO-M-60-2008**, was examined a case where under Section 24 of the HMA the husband had not paid maintenance and he had disobeyed the orders of the Court. Even he had not paid arrears for the last one year. The wife had been taking steps for recovery of payment of arrears of maintenance. The wife had come up against the judgment of the Family Court where the husband had been granted divorce under Section 13 of the HMA. Keeping in view that he was in arrears of maintenance, the appeal filed by the wife was allowed and decree of divorce was set aside. In paragraphs 15 and 16, it was observed as under:-

15. Admittedly, the respondent has not paid the maintenance pendente lite as ordered by this court on 3.7.2009. A period of more than one year has elapsed but till date he has not paid even a single penny to the wife. Earlier also the payment was made by the husband after the wife filed application seeking payment of arrears of maintenance. Now again the wife has filed application for payment of arrears of maintenance, but he has not paid the maintenance. The person who is disobeying the order of the court, cannot be allowed to be heard on merits. Since, the respondent has not complied with the order passed by this court on 3.7.2009, his defence is struck off.

16. The guidance as to how to proceed further in such circumstances is available from the judgments referred to above. It has been consistently opined that after the striking off defence of the husband on account of

non-payment of maintenance, the wife's allegations in the petition are to be taken as correct or the husband cannot be permitted to be heard on merits.

In **Sonia vs. Deepak Kumar, FAO-M-188 of 2015**, wherein this Court examined the case where petition under Sections 11 and 12 of HMA, 1955, for annulment of marriage had been allowed. Before the Family Court the defence of husband struck off as he had not paid maintenance pendente lite and litigation expenses. The appeal filed by the appellant wife was allowed on the ground that in the absence of any defence available, the marriage could not be annulled. In the facts of the present case applying the ratio of abovesaid judgment with the facts of the present case and the husband has appeared and stated that he cannot pay any maintenance to the child. The wife in the present case is bringing up the child alone, hence, the appeal is allowed on the ground of cruelty for non-payment of maintenance. The judgment and decree dated 03.02.2021 passed by the Addl. Principal Judge, Family Court, Bhiwani, is set aside. The divorce is granted to the parties. Decree-sheet be drawn accordingly.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

11.11.2022

sangeeta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No