

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

FAO-M-270 of 2006 (O&M)

Date of decision: 05.08.2022

Bishamber Singh

...Appellant

Vs.

Smt. Rekha Devi

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Shiv Kumar, Advocate,
for the appellant.

None for the respondent.

Ritu Bahri, J. (oral)

The present appeal has been filed against the judgment and decree dated 09.10.2006 passed by the Additional District Judge (Adhoc), Fast Track Court, Faridabad, whereby petition filed by Bishamber Singh-petitioner (appellant herein) under Section 13 (1) (a) (i) (b) of the Hindu Marriage Act, 1955, seeking decree of divorce on the ground of cruelty and desertion, has been dismissed.

Marriage of the parties was solemnized on 16.02.1997 according to Hindu rites and ceremonies at village Madnaka, Tehsil Hathin, District Faridabad. There is no child from this marriage. As per petitioner-appellant, from the very inception, the behaviour of respondent-wife was very rude and harsh, as she used to quarrel with the husband and his family members on petty matters. She was in the habit of leaving her matrimonial home from time to time, without the consent and knowledge of the husband-appellant. She gave threats to the appellant-husband that she

would commit suicide, just to harass and humiliate him. In the month of

September, 1999, the respondent-wife left the matrimonial home without informing the appellant. Parents of the appellant requested the respondent-wife to return back to the matrimonial house, but to no avail. Ultimately, a compromise was effected between the parties, pursuant to which, they filed a petition under Section 13-B of the Hindu Marriage Act, 1955 for obtaining a decree of divorce by mutual consent. At the time of recording first motion statements of parties, the appellant paid a sum of Rs. 1,20,000/- to the respondent-wife by way of bank draft dated 22.11.2002. However, the respondent-wife did not appear before the Court at the time of recording of second motion statements. Ultimately, the said petition was ordered to be dismissed as withdrawn vide order dated 13.09.2003. Finally, appellant-husband filed a petition under Section 13 (1) (a) (i) (b) of the Hindu Marriage Act for dissolution of their marriage on the ground of cruelty and desertion.

Upon notice, respondent-wife filed written statement denying that her behaviour towards the husband or his family members was harsh or rude. It was also denied that she used to quarrel with her in-laws family. It was stated that she was subject to physical and mental cruelty at the hands of the appellant-husband and his family members for want of insufficient dowry. All the allegations levelled by the petitioner-husband were denied and prayer for dismissal of the petition was made.

From the pleadings of the parties, following issues were framed:

1. Whether the petitioner is entitled to a decree of divorce on the grounds of cruelty and desertion as alleged? OPP
2. Relief.

In order to prove his case, petitioner-husband herself stepped into the witness box as PW-1 and examined Chhattar Singh (PW-2), Bhim Singh (PW-3) and Ram Singh (PW-4). He also tendered some documents Ex.PA to Ex.PC.

On the other hand, respondent-wife appeared into the witness box as RW-1 and examined Sunder Singh (RW-2) and Dharam Singh (RW-3). Thereafter, she tendered into evidence copy of bank account as Mark-A and closed her evidence.

Family Court, after going through the evidence led by the parties, observed that there were no specific allegations of cruelty. No instance of such harassment or embarrassment has been given. It was further observed that there was nothing on record to show that the respondent had refused to join the matrimonial home. There is no evidence that the husband had made any effort to bring his wife back after the proceedings of divorce by mutual consent failed. Finally, the trial Court observed that the husband was not able to prove either desertion or cruelty on the part of respondent-wife. With these observations, his petition was dismissed.

Heard, learned counsel for the parties.

A perusal of the impugned judgment shows that initially, a petition under Section 13-B of the Hindu Marriage Act, 1955 seek decree of divorce by way of mutual consent was filed by the parties, wherein their statements of first motion were recorded. As per settlement, respondent-wife had received a sum of Rs.1,20,000/- from the husband by way of bank draft No.877265 dated 22.11.2002 issued by the State Bank of Patiala, Hodal. In that regard, a separate receipt was also executed by the respondent-wife in the presence of witnesses. This fact was not being

disputed by the respondent-wife before the trial Court. The trial Court had observed that as far as receipt of money is concerned, the respondent-wife had accepted the receipt of money, however, at the same time, she took a plea that she had returned the said money. But, no evidence was led by the wife to prove that she had returned the said money to the appellant-husband.

During the pendency of this appeal, the respondent had put in appearance through Mr. N.D. Achint, Advocate, as is evident from the order dated 11.07.2011. Thereafter, the matter was referred for mediation, but the wife did not appear. Ultimately, the matter was sent back to this Court. Since then, neither the respondent nor his counsel has put in appearance.

The only fact requires to be examined in this case is that after being separated in the year 1999, the husband and wife did not reside together. It is a dead marriage. No useful purpose will be served in case, the parties are compelled to reside together as husband and wife.

This Court in Amandeep Goyal vs. Yogesh Rani, FAO-M-101-2019 (decided on 07.10.2021) had an occasion to consider a case, wherein the couple had two children. The elder son, who was suffering from blood cancer was in the custody of the husband and the younger son was staying with his mother. They both were working as teachers with Punjab Government. The wife, in that case, was not ready to give divorce to her husband, even though the husband had offered one time permanent alimony in the name of minor son, who was staying with the mother. Reference was made to the judgment passed by Hon'ble the Supreme Court in Naveen Kohli vs. Neelu Kohli, 2006 (4) SCC 558. That was a case of irretrievable breakdown of marriage, wherein the wife was not ready to give divorce to the husband by way of mutual consent. Hon'ble the Supreme Court held

that it was a cruel treatment as the marriage had broken irretrievably. They were granted divorce as there was no chance of coming together or living together again. Non grant of decree of divorce would be disastrous to the parties. Further, in K. Srinivas Rao vs. D.A. Deepa, 2013 (5) SCC 266, Hon'ble the Supreme Court has observed that once the marriage is dead for all purposes, it cannot be revived by Court's verdict, if parties are not willing, since 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 facts of the present case, even though, the husband has not been granted divorce. If, this appeal is dismissed, it will not create an atmosphere of patch up for both the parties. In this backdrop, we are of the view that no useful purpose will be served by asking the parties to reside together as husband and wife. Rather, non grant of divorce would amount to mental cruelty towards the appellant as well as the respondent.

Keeping in view the above discussion and the ratio of the aforesaid judgments, the present appeal is allowed and the impugned judgment and decree dated 09.10.2006 passed by the Additional District Judge, Fast Track Court, Faridabad, are set aside. Decree of divorce is granted to the parties. Decree sheet be drawn accordingly.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

05.08.2022
ajp

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