

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

FAO No.3276 of 2017 (O&M)

Date of decision: 21.11.2022

Renu

.....Appellant

Versus

Devi Dayal

.....Respondent

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

Present: Mr. G.C. Shahpuri, Advocate,
for the appellant.

Ms. Sharmila Sharma, Advocate,
for the respondent.

Ritu Bahri, J.

Appellant-wife (Renu) has come up in appeal against the judgment dated 07.04.2017 passed by the District Judge, Family Court, Rohtak, whereby petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955, for dissolution of marriage, has been allowed.

Marriage of the parties was solemnized on 18.05.2003 as per Hindu rites and ceremonies at village Bhaini Matu, Tehsil Meham, District Rohtak. Out of this wedlock, one male child namely Ankush was born. Case of the respondent-husband was that after October, 2009, behaviour of his wife (appellant) became cruel towards him. Her father was convicted for committing the murder of his brother and was also removed from the service of Haryana Roadways. He (father of appellant) started pressurizing her to demand money from her husband. Husband-Devi Dayal also faced financial difficulty due to the rising demand of money by his wife. Brother of Devi

Dayal had suffered a paralytic attack and he had to contribute money for his treatment. It was further stated that petitioner-Devi Dayal (respondent herein) is 50% disabled. On 15.10.2009, his wife-Renu (appellant) left the matrimonial house without his consent. Although, the wife had filed a petition under Section 9 of the Hindu Marriage Act, 1955, but she (appellant) refused to join the company of her husband. Later on, she withdrew the aforesaid petition on 06.05.2013. It was further stated that in a petition under Section 125 Cr.P.C., the husband was paying maintenance to the tune of Rs.7000/- per month to the wife. Hence, the petition.

Upon notice, respondent-wife (appellant herein) filed reply, wherein she denied all the allegations made in the petition. A prayer for dismissal of the petition was made.

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

1. Whether the petitioner is entitled to a decree for divorce on the grounds as mentioned in the petition? OPP
2. Whether the petition of the petitioner is not maintainable? OPR
3. Whether the petitioner has not come to the Court with clean hands and has suppressed the true facts? OPR
4. Relief.

In order to prove his case, husband-Devi Dayal himself appeared in the witness box as PW-1 and tendered some documents as Ex.P1 to Ex.P4. Sukhbir Singh, Clerk Office of General Manager, Haryana Roadways, Rohtak, was examined as PW-2, who proved on record documents Ex.P1 to Ex.15. Smt. Channo Devi was examined as PW-3, who proved on record documents Ex.P16 to Ex.P19. On the other hand,

respondent-wife, Renu, appeared as RW-1 and tendered into evidence documents Ex.D5 to Ex.D7. She also examined Kanwal Singh as RW-2.

The Family Court, after going through the evidence led by the parties, allowed the petition by observing that in the complaint under the Domestic Violence Act, the wife was given keys of the matrimonial house, but she refused to reside there. She was also offered rent, but she refused for the same. In this backdrop, the execution petition was ordered to be consigned by the Sub Divisional Judicial Magistrate, Meham. During her cross-examination, the wife had admitted the said fact. It was further observed that the wife (appellant herein) had filed a petition under Section 9 of the Hindu Marriage Act, 1955 and she withdrew the same on 06.05.2013. During cross-examination, she stated that she did not know as to why she had withdrawn the petition under Section 9 of the Hindu Marriage Act. The Family Court has further observed that the husband, Devi Dayal, is 50% disabled. However, his wife-Renu, during cross-examination, had shown her ignorance by stating that she did not know, whether he is 50% disabled or not. Father of Renu, namely Kanwal Singh (RW-2), during cross-examination, stated that he had visited the matrimonial house of her daughter a lot of times from 2006 to 2009. The appellant (wife) had denied that brother of Devi Dayal had suffered a paralytic attack. However, her own father i.e. Kanwal Singh (RW-2) had stated that he had met Devi Dayal when his brother Devi Chand suffered paralytic attack. With these observations, the Family Court has allowed the petition filed by the respondent-husband for dissolution of marriage of the parties on the ground of desertion.

Heard, counsel for the parties.

Respondent-husband has placed on record copy of judgment dated 15.09.2014 (Annexure R-1) passed by the Sub Divisional Judicial Magistrate, Meham in a petition under Section 125 Cr.P.C., whereby he (Devi Dayal) has been directed to pay maintenance of Rs.6000/- and Rs.4000/- to appellant-wife and son-Ankush respectively. He has also placed on record copy of judgment dated 18.02.2015 (Annexure R-2) passed by the Sub Divisional Judicial Magistrate, Meham, whereby in a criminal trial, he, alongwith his family member, has been acquitted of the charges framed under Sections 498-A/406/323/34 IPC. Annexure R-3 is the salary slip for the month of October, 2018-2019 showing that he is getting gross salary of Rs.65,113/- per month. After deductions, his carry home salary is Rs.17,386/- per month.

In the present case, the matter was referred to the Mediation and Conciliation Centre of this Court. However, the mediation had failed. A perusal of order Ex.P20 shows that the appellant-wife was given the keys of house, but she refused to reside in the matrimonial house. Apart from desertion, respondent-husband had suffered cruelty at the hands of appellant-wife as is evident from the judgment dated 18.02.2015 (Annexure R-2), whereby he has been acquitted in the criminal case, which was instituted under Sections 498-A/406/323/34 IPC at the instance of appellant-wife. The entire behaviour of the appellant, coupled with the fact that she herself had withdrawn her petition under Section 9 of the Hindu Marriage Act, shows that she had deserted her husband-respondent intentionally. At the same time, the respondent-husband is working as Government teacher and is very well aware of the fact that she has to maintain his wife and minor child. He cannot wriggle out of his

responsibility to give alimony to his wife and son.

In the facts of the present case, the husband-respondent has been granted divorce on the ground of desertion. If, the present appeal, filed by the wife, is accepted, it will not create an atmosphere of patch up for both the parties. The appellant-wife has consciously left her matrimonial house. She did not make any attempt to reside with the respondent-husband. 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 husband-respondent as well as the appellant.

Accordingly, the present appeal is dismissed. However keeping in view the financial status/salary of the respondent-husband, he is directed to pay Rs.12,00,000/- as permanent alimony to the appellant-wife.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

21.11.2022
ajp

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