

FAO-4912 of 2012 (O&M)

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

FAO-4912 of 2012 (O&M)
Date of Decision: 16.05.2022

Anoop Singh Malik

...Appellant-Husband

Versus

Rajesh

....Respondent-Wife

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

Present:- Mr. Sandeep Singh Sangwan, Advocate,
for the appellant-husband.

Mr. R.A. Sheoran, Advocate,
for the respondent-wife.

ASHOK KUMAR VERMA, J.

CM-21601-CII of 2012

Through this application under Section 151 CPC prayer has been made for condonation of delay of 602 days in refiling the appeal.

For the reasons mentioned in the application, same is allowed.

Delay of 602 days in refiling the appeal is condoned.

CM-21600-CII of 2012

Through this application under Section 5 of the Limitation Act, 1963 read with Section 151 CPC prayer has been made for condonation of delay of 321 days in filing the appeal.

For the reasons mentioned in the application, same is allowed.

Delay of 321 days in filing the appeal is condoned.

FAO-4912 of 2012

(1) Appellant-husband has come up in this appeal against the

FAO-4912 of 2012 (O&M)

judgment and decree dated 25.05.2010 passed by the District Judge (Family Court), Bhiwani, whereby petition filed by him under Section 13 (1)(ib) of the Hindu Marriage Act, 1955 (for short 'the HMA') for dissolution of marriage by a decree of divorce, has been dismissed.

(2) Brief facts of the case are that marriage of the appellant with respondent was solemnised on 01.07.1998 at village Tikan Kalan, Tehsil Charkhi Dadri, District Bhiwani as per Hindu rites and ceremonies. The marriage was consummated and two children, namely, Ashish Malik and Annu Malik were born. As per appellant-husband the marriage was a simple affair and neither any demand of dowry was made nor any articles were given. During the stay of the parties together, the conduct of the respondent-wife was far from that of a normal Hindu wife as she treated the appellant and his family members with mental as well as physical cruelty. After the marriage, respondent joined the matrimonial house with the appellant at Chandigarh where he was employed. They lived there and cohabited. It has been averred by the appellant-husband that respondent-wife is a short tempered, irresponsible, non-cooperative in nature and is having a stubborn attitude. However, appellant always tried to accommodate the respondent with a fond hope that good sense would prevail upon her. It has also been alleged that respondent has been a negligent mother as she would leave the children alone to suffer injuries. She would not cook food and children had to go without meals a number of times. Appellant and his mother are looking after the children. It has further been alleged that on 13.01.2004 respondent came back along with her uncle Dhoop Singh, her brother Ranbir but after few days demanded

FAO-4912 of 2012 (O&M)

that mother of the appellant should not live at Chandigarh and should go back to her village. On 17.02.2004, respondent picked up quarrel with the mother of the appellant and caused injuries to her. On the request of the appellant-husband, on 10.02.2004 father and uncle of the respondent-wife came to Chandigarh and took away respondent along with minor Ashish to their village on 19.02.2004. On 30.05.2004, respondent came back to Chandigarh and insisted that both the children should study in village. She categorically stated that the appellant-husband is dead for her and she is a widow and she does not need anybody's help and demanded the keys of house belonging to the father of the appellant in his native village so that she can stay there along with children. She even threatened to commit suicide alongwith children in case her demand is not met. For the safety of the children, appellant and his family members agreed for this unreasonable condition put forward by the respondent. Even then respondent-wife stated that appellant-husband should seek divorce from her as she is not interested in living with the him. Despite shifting to village Ajitpur and even after all the facilities of livelihood being provided by the appellant and his family members, respondent started quarrelling with uncle of the appellant, namely, Rajbir Singh and demanded that all the land of the family should be handed over to her only and she should get the control over income of the family land. When this condition was not met by the uncle of the appellant, respondent called his father and uncle, who threatened the uncle of the appellant of dire consequences in case he does not agree to the conditions imposed by the respondent. When illegal demands of the respondent were not met by the

FAO-4912 of 2012 (O&M)

appellant and his family members, Krishan brother of the respondent-wife came on 21.11.2004 and threatened to file a dowry case against them in case they failed to meet the demands of the respondent, to which appellant and his parents bluntly refused. After some time, respondent moved a complaint with the Senior Superintendent of Police, Bhiwani, against the appellant and his family members. After thorough inquiry by the concerned authorities, the complaint of the respondent with regard to demand of dowry or *istridhan* was found to be false and it was confirmed that the basic issue of dispute was that the respondent had not performed her duties of a normal mother towards her own children which has resulted in the strained relation between husband and wife. Such false complaints have lowered the status of the appellant and his family members in the public eye. In order to please the respondent and to buy peace, on 08.05.2004 appellant shifted his residence to House No.2636, Sector 37-C, Chandigarh, and paid the rent in advance, but still the respondent did not join the appellant, which further caused cruelty to the appellant. It has further been pleaded that appellant was left with no other option but to file a petition under Section 9 of the HMA. However, during the pendency of the said petition, respondent approached the SSP, Bhiwani, by way of a representation dated 21.04.2005 and stated that she was ready to join the matrimonial home unconditionally. As a result of which, the matter was patched up and respondent agreed to come to matrimonial home on 04.06.2005 but the behaviour of the respondent did not change and there was no cohabitation and restitution of conjugal rights between the parties. On 05.07.2005, when the appellant was in his

FAO-4912 of 2012 (O&M)

office, respondent left the matrimonial home along with his brother and child Ashish Malik without the consent of the appellant and his family members. All the efforts made by the appellant to bring the respondent back to her matrimonial home failed. Consequently, keeping in view the odd conduct of the respondent, appellant withdrew the petition filed by him under Section 9 of the HMA on 30.07.2005 in the Lok Adalat and filed the petition under Section 13(1)(ib) of the HMA on 02.08.2005 for dissolution of marriage was filed by the appellant.

(3) On notice, respondent-wife appeared and filed written statement to the petition controverting its averments. It is averred by the respondent-wife that after the marriage she went to her matrimonial house with the appellant at village Ajitpur and they lived together as husband and wife and consummated the marriage. After some time, appellant took the respondent to Chandigarh where his father was serving in Irrigation Department whereas appellant was unemployed at that time. Her parents gave sufficient dowry at the time of marriage. However, appellant and his family members were greedy persons and they were not satisfied with the dowry. They started taunting the respondent for bring less dowry and she was harassed mentally and physically. After the birth of son, appellant and his family members asked the respondent to bring a car and ₹50,000/- in cash for paying instalments of the house, gold bangles and necklace. During that period appellant got a job. Parents of the respondent gave much in '*chhuchhak*' but appellant and his family members were not satisfied and they started beating the respondent. On 31.12.2003 appellant turned the respondent out of the house after giving merciless

FAO-4912 of 2012 (O&M)

beatings and threatened that if the aforesaid demand is not fulfilled he would not keep the respondent with him. Respondent went to village Tikan Kalan at her parental house and narrated all these things to her parents. On 12.01.2004, Ranbir and Bhoop Singh, brother and uncle of the respondent, respectively, went to Chandigarh along with respondent and asked the appellant the reason for giving beatings to her. At this, father of the appellant clearly stated that if their demand was not fulfilled they would not keep the respondent, moreover they would kill her. Brother and uncle of the respondent left her at Chandigarh and assured the appellant's family to fulfil their demand. After one month, appellant's family again started giving beating to her. On being informed by the respondent, her father went to Chandigarh and took the respondent and children with them on 19.02.2004. Appellant did not come to parental home of the respondent to take her and the children. However, in order to settle in her matrimonial home, respondent came to village Ajitpur in the month of August, 2004 with her children at her in-law's house and started living there. But appellant and his parents started harassing the respondent and threatened that they would kill her in the event of her staying any longer at village Ajitpur. Thus, respondent went to village Tikan Kalan with her children in the second week of December 2004 from village Ajitpur. Being aggrieved, respondent moved an application before the SSP Bhiwani on 27.12.2004. Appellant and his family members were summoned and the matter was compromised on 04.06.2005 in the presence of the respectables of the parties and the appellant took the respondent to Chandigarh but there was no change in their behaviour and

FAO-4912 of 2012 (O&M)

they again gave beatings to the respondent. When on 05.07.2005 Ranbir, brother of the respondent went to Chandigarh to see the respondent, appellant gave beatings to the respondent and her brother and turned the respondent out of the matrimonial house. Respondent and her brother came to village Tikan Kalan along with her son Ashish. Accordingly, respondent prayed for dismissal of the petition filed under Section 13(1) (ib) of the HMA filed by the appellant.

(4) No replication was filed. On the basis of the pleadings of the parties, following issues were framed by the Family Court: -

- “1. Whether the petitioner is entitled to decree of divorce in view of the ground mentioned in the petition i.e. cruelty? *OPP*
2. Whether the petition is not maintainable and the petitioner has no cause of action in view of the facts mentioned in the preliminary objections of reply? *OPR*
3. Relief.”

(5) In order to prove his case, appellant-husband Anoop Singh Malik stepped into witness box as PW7 and tendered his affidavit Ex.PW7/A in his evidence and reiterated the facts of the petition, besides examining Ms. Bishni Devi, Inspector, Incharge Senior Citizen Cell, S.P. Office, Jind, as PW1; Constable Balraj as PW2; Gurvinder son of Nihal Singh as PW3; Kanta wife of Sukhbir as PW4; Phoolpati wife of Prithvi Singh as PW5 and Rajbir as PW6. Appellant's evidence was closed on 21.08.2009 by Court order.

(6) On the other hand, respondent-wife Rajesh herself appeared as RW1 and tendered her affidavit Ex.RW1/A in her evidence and reiterated

FAO-4912 of 2012 (O&M)

the facts of written statement, besides examining Shakuntla as RW2; Dhoop Singh as RW3; Ranbir as RW4 and Sher Singh as RW5, who have tendered their respective affidavits as Ex.RW2/A, Ex.RW3/A, Ex.RW4/A and Ex.RW5/A in their evidence. Respondent's evidence was closed on 22.04.2010.

(7) The Family Court has returned a finding against the appellant-husband and decided issue No.1 in favour of the respondent-wife observing that as per appellant-husband they resided together till 05.07.2005. On 05.07.2005 brother of the respondent namely Ranbir took away the respondent-wife and son from the matrimonial home at Chandigarh. As per provision of Section 13(1)(ib) of the HMA one can be granted divorce on the ground of desertion only if a party to the marriage has deserted the other party to the marriage for a period not less than two years. Whereas, in the present case petition for grant of decree of divorce was filed by the appellant on 02.08.2005 and as per appellant himself the parties to the petition resided together till 05.07.2005, therefore, ground of desertion was not available to the appellant. As far as cruelty is concerned, the Court was of the opinion that it was not proved that the appellant was treated with cruelty and if any cruelty was there on the part of the respondent then that stood condoned by the act and conduct of the appellant himself. With regard to demand of dowry, the Family Court further observed that mere initiation of criminal proceedings on demand of dowry does not constitute cruelty. The allegation of the appellant that respondent was negligent and careless towards her own children was also discarded by the Family Court on the basis of the

FAO-4912 of 2012 (O&M)

admission of the appellant that both the children were being brought up by the respondent.

(8) Heard learned counsel for the parties at length.

(9) Perusal of the paper-book shows that appellant and his family members stand acquitted in case arising from FIR No.176 dated 26.08.2005 got registered by the respondent under Sections 498-A, 406, 506 and 34 IPC at Police Station Sadar Dadri, by the trial Court vide judgment dated 16.03.2013; appeal filed by the respondent against the judgment of acquittal has been dismissed by the Additional Sessions Judge, Bhiwani, vide judgment dated 06.10.2015 and revision petition filed by the respondent against the aforesaid judgments has also been dismissed by this Court vide order dated 28.04.2017 passed in CRR-117 of 2016. Moreover, summoning order of the appellant in complaint filed by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005 has been quashed by this Court vide order dated 06.02.2012 passed in CRM-M-44623 of 2007.

(10) The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give a mutual divorce to the appellant-husband, whether this act of her's, would amount to cruelty towards the appellant-husband, keeping in view the fact that she is not staying with her husband for the last more than 16 years and there is no scope that they can cohabit as husband and wife again.

(11) Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in the case of ***Chandra Kala Trivedi vs. Dr.***

FAO-4912 of 2012 (O&M)

S.P. Trivedi, 1993 (4) SCC 232 wherein Hon'ble the Supreme Court while considering a case where marriage was irretrievably broken down and held that in these case, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together.

(12) Reference at this stage can be made to a judgment of three Judge Bench of Hon'ble the Supreme Court of India in the case of ***A Jayachandra vs. Aneel Kaur, 2005 (2) SCC 22*** wherein Hon'ble the Supreme Court had an occasion to consider the case of divorce on the basis of cruelty, including mental cruelty. While examining the pleadings and evidence brought on record, the Court emphasized that the allegation of cruelty is of such nature in which resumption of marriage is not possible, however, referring to various decisions, the Court observed that irretrievable breaking down of marriage is not one of statutory grounds on which Court can direct dissolution of marriage, but the Court with a view to do complete justice and shorten the agony of the parties engaged in long-drawn legal battle, directed in those cases dissolution of marriage. In para 17, it has been observed as under:-

17. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that

FAO-4912 of 2012 (O&M)

long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long- drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases.”

(13) The three Judge Bench of Hon'ble the Supreme Court in a case of **Samar Ghosh vs. Jaya Ghosh, 2007 (4) SCC 511** passed the decree on the ground of mental cruelty but the concept of irretrievable breakdown of marriage has been discussed in detail referring the 71st report of the Law Commission of India.

(14) Hon'ble the Supreme Court in a case of **K. Srinivas Rao vs. D.A. Deepa, 2013 (5) SCC 266** has observed that though irretrievable breakdown of marriage is not a ground for divorce under the HMA, however, a marriage which is dead for all purposes, cannot be revived by a Court's verdict, if parties are not willing to work out their differences. 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 an artificial reunion created by a Court decree.

(15) Further reference can be made to a judgment of this Court in a

FAO-4912 of 2012 (O&M)

case of ***Imlesh vs. Amit AIR 2014 (P&H) 89*** wherein it has been held that where the wife files a false criminal complaint against the husband and his family members under Sections 406/498-A of IPC, which results in their acquittal, this act of the wife tantamount to mental cruelty and the husband would be entitled to a decree of divorce under Sections 13 (1) (ia) of the Act of 1955.

(16) Hon'ble the Supreme Court in the case of ***Naveen Kohli vs. Neetu Kohli, 2006 (4) SCC 558*** dealt with an issue where the wife was living separately for long but did not want divorce by mutual consent only to make life of her husband miserable. Thus, the decree of divorce was granted being a cruel treatment by the respondent-wife and held that the marriage had broken irretrievably. In para 62, 67, 68 and 69, 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.

xxx

xxx

xxx

67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human

FAO-4912 of 2012 (O&M)

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 extra-ordinary 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.”

(17) In the present case, the marriage between the parties has broken down irretrievably and there is no chance of their coming together, or

FAO-4912 of 2012 (O&M)

living together again. Further, not to grant decree of divorce would be disastrous for the parties.

(18) Applying the ratio of the above mentioned judgments to the facts of the present case and keeping in view the extra-ordinary facts and circumstances of the case, the appeal is allowed and judgment dated 25.5.2010 passed by District Judge (Family Court), Bhiwani is set aside and the decree of divorce is granted to the parties. Decree-sheet be prepared accordingly. However, we direct the appellant-husband to make an F.D of ₹15 lacs in the name of the respondent-wife.

(19) In view of disposal of the appeal, civil miscellaneous application, if any pending also stands disposed of.

(Ritu Bahri)
Judge

(Ashok Kumar Verma)
Judge

May 16, 2022
R.S.

Whether speaking/reasoned Yes

Whether Reportable Yes