

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

FAO No. 8014 of 2017

Date of decision :- September 12,2022

Manu Mehta

.....Appellant

Versus

Jagdeep Kaur

.....Respondent

**CORAM :- HON'BLE JUSTICE MS. RITU BAHRI
HON'BLE JUSTICE MS. NIDHI GUPTA**

Present :- Mr.Aman Pal,Advocate for the appellant-husband.

None for the respondent-wife.

NIDHI GUPTA, J.

The present appeal has been filed by the appellant-husband against the dismissal of his petition under Section 13 (ia) and (ib) of the Hindu Marriage Act,1955 (hereinafter referred to as 'the Act'), seeking dissolution of his marriage from the respondent on the ground of desertion. Vide impugned order dated 26.7.2017, District Judge, Family Court, Gurugram dismissed the appellant's petition on the ground that desertion on the part of the respondent-wife is not made out.

Brief facts of the case are that the respondent belongs to Malaysia and lives there with her parents. The parties met on the

internet and started interacting with each other. Thereafter, they fell in love and decided to marry in Delhi as the parents of the appellant lived in Gurgaon. Before their marriage it was clarified by the appellant to the respondent that she will have to leave Malaysia and reside with him in Gurgaon. Consequentially, the parties were married according to Hindu rites and rituals at Delhi on 12.9.2010. It is stated that the parties lived happily in their matrimonial home in Gurgaon till 2013 when the respondent's father fell sick and she had to go back to Malaysia to attend to her father. The appellant tried to dissuade the respondent from going. However, the respondent was adamant and did not listen to the appellant and left for Malaysia on 16.10.2013.

It is appellant's case that despite the greatest efforts on his part, the respondent has not returned to the matrimonial home after 16.10.2013. Appellant stated that he had pleaded with the respondent many times through Email and on telephone to return home, but to no avail. Accordingly, the respondent had willfully deserted her matrimonial home on 16.10.2013 without consent of the appellant and without any reasonable cause. In view of this fact, after waiting for a period of over 2 years and 9 months, the appellant had filed petition u/s 13 of the Act before the Id. Family Court, Gurugram, praying for divorce.

The Family Court issued notice in the matter to the respondent in Malaysia as she was residing there. Respondent was even ordered to be served through the Ministry of Law & Justice but no report was received back. Postal courier was sent to the respondent on 30.9.2016 and thereafter again another postal courier was sent through the Ministry of Justice for 6.2.2017, but the

respondent did not put in appearance. Accordingly vide order dated 20.4.2017, the learned Family Court directed that she be proceeded against ex parte.

The appellant appeared as PW1 and adduced sufficient documentary evidence in support of his case. An ex parte evidence against the respondent was directed to be closed by the Family Court after affording several opportunities to her to lead evidence.

However, despite the abovesaid facts and situation the learned Family Court declined to grant decree of divorce in favour of appellant, and vide impugned order dated 20.9.2017 dismissed the appellant's petition under Section 13 of the Act. Hence, the present appeal.

This Court issued Notice in the matter as far back as 11.12.2017. Thereafter, the matter has been adjourned on 16.5.2018, 25.10.2018, 15.1.2019, 14.5.2019, 19.12.2019, 23.1.2020 but on no date has the respondent put in appearance. Same is the position today.

We have heard learned counsel for the appellant and perused the record.

The facts make it clear that the appellant has tried in various ways to persuade the respondent to rejoin the matrimonial home and cohabit with him as husband and wife. However, at no stage has the respondent shown any inclination to do so. On the contrary, she has rebuffed the appellant's numerous attempts at every stage.

In this regard, reference may be made to 'Mark – PD' in the Lower Court Record which is an email dated 30.3.2016 written by the

appellant to the respondent asking her to return to the matrimonial home so that they could live together. In reply thereto, the respondent sent an Email dated 31.3.2016 to the appellant reproduced below:-

*“Hi Manu,
I believe I have made it clear that I do not intend to
continue this marriage nor am I keen on returning to
India.
I do hope you understand that this is my final
decision.
Regards,
Jagdeep Kaur”*

In our view, the stark and categoric refusal on part of the respondent to rejoin the appellant in the Email reproduced above clearly shows that she wants to sever all matrimonial ties with the appellant. This intention of the respondent is also evident from her conduct, from the fact that the respondent has not put in appearance on any date or tried to contest the divorce proceedings at any stage either before the Id. Family Court below, or before this Court.

We further find that this conduct of the respondent constitutes ‘desertion’ and meets the requirements for grant of divorce as mandated under the law. The following observations of the Hon’ble Supreme Court in case of ‘**Debananda Tamuli v. Kakumoni Katakya**’ (SC) : **Law Finder Doc Id # 1944585**, cover the present case squarely, and would lay to rest the present controversy:

“The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of

separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. The view taken by this Court has been incorporated in the Explanation added to sub-section (1) of Section 13 by Act No.68 of 1976. The said Explanation reads thus:

"13. Divorce.- (1)"

[3*][Explanation.-In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]"

In our view, *animus deserendi* on part of respondent is clearly made out by her conduct and from the facts enumerated above.

In the facts and circumstances of the present case it may be added that, no doubt, the ground of irretrievable breakdown of marriage is not available in the statute; and the power to grant divorce on ground of irretrievable breakdown of marriage is only with the Hon'ble Supreme Court under Article 142. Nonetheless, for the purposes of the present case, observations of the Hon'ble Supreme Court in the case of '**Naveen Kohli v. Neelu Kohli**', (2006) 4 SCC 558 where the Hon'ble Supreme Court considered the concept of irretrievable breakdown of marriage are relevant. In that case too the parties had been living separately since ten years and the wife was not ready to grant divorce to her husband. However, notwithstanding this factual position, Hon'ble Supreme Court was pleased to grant divorce in said matter and further noticed as follows:

“32. In ‘**Sandhya Rani v. Kalyanram Narayanan**’, (1994) **Supp. 2SCC 588**, this Court reiterated and took the view that since the parties are living separately for the last more than three years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce.

33. In the case of ‘**Chandrakala Menon v. Vipin Menon**’, (1993)2 **SCC 6**, the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce.

34. In the case of **Kanchan Devi v. Promod Kumar Mittal**, 1996(2) **RCR (Criminal) 614 : (1996)8 SCC 90**, the parties were living separately for more than 10 years and the Court came to the conclusion that the marriage between the parties had to be irretrievably broken down and there was no possibility of reconciliation and therefore the Court directed that the marriage between the parties stands dissolved by a decree of divorce.”

Another minor fact that may be clarified is that a Marriage Certificate Ex.P4 issued by the Arya Samaj Mandir, Jharsa, Gurgaon was placed on record by the appellant before the Family Court in which the date of marriage has been shown as 27.5.2010 and place of marriage as Gurgaon; whereas as per averments made in the petition it has been stated that the parties got married in Delhi as per Hindu rites and rituals on 12.09.2010 as also evident from marriage invitation card Ex.P-3. In our view the learned Family Court has erred in drawing an adverse inference against the appellant by holding that this

discrepancy regarding date of marriage was deliberately misleading. We find that the explanation given by the appellant in this regard is believable which is that the marriage certificate dated 27.5.2010 Ex. P4 was obtained by the appellant from Arya Samaj Mandir, Jharsa, Gurgaon for the sole purpose of obtaining a spousal/ dependent visa for the respondent in order to facilitate her travel and stay in India. It has been clearly stated in the appeal as also in the petition before the Family Court that the parties resided as husband and wife in the matrimonial home only after solemnization of wedding ceremonies on 12.9.2010. As such, we find no discrepancy in the case and do not consider this a valid ground to deny divorce to the appellant. On the contrary it establishes the bona fide intentions of the appellant vis a vis the respondent; as also shows that the appellant has not withheld anything from the Court.

For the reasons stated above, this appeal is allowed; impugned order dated 20.9.2017 passed by the learned Family Court, Gurgaon is set aside; the petition for divorce filed by the appellant under Sections 13(ia) and (ib) of the Act is decreed and the marriage solemnized between the parties on 12.9.2010 is dissolved by a decree of divorce.

(NIDHI GUPTA)
JUDGE

(RITU BAHRI)
JUDGE

September 12,2022
Joshi.

Whether speaking/reasoned
Whether reportable

yes/no
yes/no

