

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**CMM-43-2022 and
FAO-M-251-2018
Date of decision: 27.10.2022**

Narinder Singh

....Appellant

Vs.

Nanki @Sukhdeep Kaur

....Respondent

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

**Present: Mr. Vikramjeet Singh, Advocate
for the appellant.**

**Mr. Vivek Salathia, Advocate
for the respondent.**

Ritu Bahri, J.

The appellant, Narinder Singh has come up in the appeal against the judgment and decree dated 23.03.2018 passed by the Family Court, Bathinda whereby his petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955) was dismissed.

The brief facts of the case are that the marriage of the appellant-petitioner was solemnized with the respondent in February, 2008 at Amritsar as per Sikh Rites and ceremonies. After the marriage, the parties resided together as husband and wife but no child was born from their lions. The respondent is a lady of quarrelsome nature. She used to quarrel with the appellant-petitioner and his family members and started creating nuisance in the house. She used to refuse to prepare tea and cook food for the appellant-petitioner and always used to insult him in the

presence of his relatives and friends. Respondent used to leave the matrimonial home after quarreling with the appellant-petitioner and his family members and he had to arrange panchayat to settle the matter. In the month of March, 2009, respondent after quarreling with the appellant-petitioner left his society in his absence. On 20.11.2009 appellant-petitioner alongwith the panchayat went to the parental house of the respondent to join him but she flatly refused to do so. Thereafter, petitioner filed a petition under Section 9 of the Act, 1955 in December, 2009 but the respondent refused to receive summons and was proceeded against exparte. The said petition was allowed exparte vide judgment dated 30.08.2010. Petitioner again visited the parental house of the respondent to bring her back and also convened a panchayat consisting of respectable persons but the respondent refused to live with him and threatened him that she would commit suicide in case he again visited her house. The respondent deserted and neglected the petitioner and treated him with immense cruelty. Finally, he filed divorce petition.

After notice, the respondent appeared through a counsel and filed her reply admitting the factum of marriage and denying all the allegations made in the divorce petition. She stated that her parents gave sufficient dowry to him and his family members but they were greedy persons and were not satisfied with the dowry given by her parents. In March, 2009, the petitioner had himself deserted her after giving merciless beatings to her. She never received any summons regarding petition under Section 9 of the Act rather she was totally unaware about the petition and judgment and decree passed in the said petition. She has been deserted and neglected by the petitioner. She made an application for setting aside

exparte decree dated 30.08.2010 which was allowed vide order dated 25.04.2017 and the petition was restored with its original file number.

From the pleadings of the parties, following issues were framed on 23.05.2017:-

1. Whether the respondent has treated the petitioner with cruelty? OPP
2. Whether the petitioner is entitled to decree of divorce on the grounds mentioned in the petition? OPP
3. Relief

The appellant-petitioner appeared as PW-1. He also examined Charanjit Madaan as PW-2, Shavinder Singh as PW-3 and, thereafter, closed his evidence.

The respondent appeared as RW1 and, thereafter, she closed her evidence.

After going through the evidence led by the parties, the Family Court returned findings against the appellant-petitioner keeping in view that no leading cogent and convincing evidence was placed on record and the allegations levelled by him against the respondent are vague and general in nature. With respect to decree under Section 9 of the Act, 1955, it was observed that it was an exparte decree and it does not show that respondent had no desire to leave with him. Further, the appellant-petitioner filed divorce petition on 15.05.2017 after the exparte decree dated 30.08.2010 passed in petition under Section 9 of the Act, 1955. The appellant-petitioner was the one, who had no desire to live with the respondent. With respect to the allegations of the appellant-petitioner that respondent had threatened to commit suicide, no evidence was led by the appellant-petitioner to show that she had committed any such action nor any FIR was lodged by him against the respondent for an attempt of committing suicide

or involve him and his family members in a false criminal case. After referring judgments passed in *Savitri Rayat vs. Gobind Singh Rayat 1986 RCR (Crl.) 1* and *Ajeet Kumar Bedi vs. Raj Rani 1997(4) RCR (Crl.) 812*, the Family Court observed that no girl would leave the matrimonial home except for the circumstances which make the living therein impossible. Further except the exparte decree passed in petition under Section 9 of the Act, 195, no evidence was produced to show that any reconciliation efforts were made by the appellant-petitioner or any panchayat was convened by approaching the family of the respondent and finally the divorce petition of the appellant-petitioner was dismissed.

In the present case, the parties were relegated for mediation and as per the report of the Mediator dated 10.05.2019, the respondent had not put in appearance before the Mediation and Conciliation Centre on 10.04.2019, 29.04.2019 and 10.05.2019. However, some joint sessions were conducted but the mediation was not fruitful. The appellant-petitioner has not produced any order to show the final outcome of the petition under Section 9 after restoration vide order dated 25.04.2017. At the same time, it is clear that the appellant-petitioner and respondent have been staying separately since March, 2009 i.e. for the last 13 years. The marriage between the parties was solemnized in February, 2008 and there is no child from the marriage. They stayed together only for a year. It can be safely concluded that it is a case of a dead marriage for all intents and purposes with no emotional bonding between the parties. There is no criminal complaint pending between the parties. Even if the afore-said judgments referred by the Family Court are to be considered that wife does not want to leave her matrimonial home easily and in all probabilities, it was the

husband who wanted to get rid of the wife still it can be safely concluded that the respondent herself did not make any efforts to go back to her matrimonial home even after exparte decree dated 30.08.2010 and after order dated 25.04.2017 by which her application to restore Section 9 petition was allowed. If she had a desire to live with the appellant-petitioner she could have gone back to her matrimonial home after exparte decree dated 30.8.2010 which was passed in her favour ultimately. By not granting divorce to both the parties, would amount to cruelty when they have been staying separately for the last 13 years.

Hence, the appeal is allowed and the appellant is granted divorce under Section 13 of the Act, 1955. However, a direction is given to the appellant to give Rs. 7 lacs as permanent alimony to the respondent-wife within a period of one month from the date of receipt of certified copy of this order.

Decree sheet be drawn accordingly.

CMM-43-2022 also stands disposed of.

(RITU BAHRI)
JUDGE

27.10.2022

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No