

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

FAO-M-32-2019

Date of decision: 25.05.2022

Amandeep Kaur

...Appellant

Vs.

Narinder Singh

...Respondent

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

Present: Mr. Avtar Singh Syan, Advocate,
for the appellant.

Mr. S.S. Sidhu, Advocate,
for the respondent.

Ritu Bahri, J. (oral)

The present appeal has been filed against the judgment and decree dated 29.09.2018 passed by the Additional District Judge, Ludhiana, whereby petition filed by Amandeep Kaur-appellant under Section 13 of the Hindu Marriage Act, 1955, seeking dissolution of marriage, has been dismissed.

Marriage of the appellant and respondent was solemnized on 01.05.2013 as per Sikh Rites. No child was born out of this wedlock. As per appellant-wife, from the very inception, behaviour of respondent-husband and his family was not cordial with her. They used to humiliate her on the pretext of not bringing sufficient istridhan. It was alleged that the respondent is a man of bad vices and he used to beat the appellant under the influence of liquor. On 10.05.2013, she was given beatings by the respondent-husband and was compelled to make a call to her parents and

demand Rs.5 lakh and a motorcycle. When her parents refused to do so, she was again beaten up. Ultimately, she filed the petition under Section 13 of the Hindu Marriage Act seeking divorce on the ground of cruelty.

Upon notice, respondent-husband (respondent herein) filed written statement taking preliminary objections with regard to concealment of facts etc. On merits, all the allegations levelled by the appellant-wife 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 for decree of divorce on the ground of cruelty as prayed for? OPP
2. Relief.

In order to prove her case, petitioner-wife (appellant herein) herself stepped into the witness box as PW-1 and examined her father Baldev Singh (PW-2).

On the other hand, respondent-husband failed to pay maintenance to the appellant, due to which, his defence was struck off.

Trial Court, after going through the evidence led by the parties, held that the husband-respondent had filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights on 08.08.2013 i.e. much prior to the filing of petition under Section 13 of the Act, which was filed in the year 2015. In that case, initially the wife had appeared and filed an application under Section 24 of the Hindu Marriage Act. However, later on, she absented from the Court and the petition was decreed exparte vide judgment dated 04.01.2018 Ex.D2. The wife (appellant) did not prefer any appeal against the said judgment. It was further observed that the wife

(appellant herein) had allegedly made a complaint that she was maltreated by the husband and his family members on the demand of dowry. This version was considered as improbable, as father of the appellant could not produce any complaint, which was alleged to have been made in the *suvidha* centre. As per appellant-wife, there was demand of Rs.5 lakhs and a motorcycle on the part of respondent-husband. She told about this fact to her aunt, but she (aunt) was never examined in Court. The husband had produced writing of the father of appellant as Mark R1, which was exhibited as Ex.D1, where he (father of appellant) had undertaken to drop the appellant-wife back in the matrimonial home. There was no evidence that the appellant was maltreated in her matrimonial house. With these observations, petition filed by the wife-appellant seeking divorce has been dismissed.

Heard, learned counsel for the parties.

During the pendency of petition before the trial Court, defence of the husband-respondent was struck off as he had failed to maintenance to the wife-appellant.

Before this Court, at the time of issuing notice of motion on 01.02.2019, the husband was directed to pay Rs.25,000/- as litigation expenses to the wife. Thereafter, vide order dated 18.09.2019, the matter was referred for mediation. However, as per report of the Mediator dated 03.12.2019, no amicable settlement could be arrived at between the parties. On 04.03.2020, the case was adjourned to 28.05.2020 to enable the respondent-husband to pay Rs.25,000/- as litigation expenses to the appellant-wife.

Even today, both the parties were present in Court and Mr.

Rishab Jain, Advocate, was appointed as Mediator. After interacting with the parties, he informed that the mediation has failed.

In the facts of the present case, respondent-husband did not pay any maintenance to the appellant-wife before the trial Court, therefore, his defence was struck off. Petition under Section 13 of the Hindu Marriage Act was filed on 24.07.2015 and till today i.e. 25.05.2022, no maintenance has been paid by the respondent-husband to the appellant-wife. Even the litigation expenses of Rs.25,000/- has not been paid to the wife. Non payment of maintenance along with litigation expenses, also amounts to cruelty in itself. Hence, it is a good ground to grant divorce to the appellant, especially keeping in view that marriage of the parties was solemnized way back in the year 2013 and they are living separately for the last more than 07 years. There is no child from this marriage. It is completely a dead marriage. It cannot be revived by giving direction to the appellant-wife to go and stay with her husband. Though, her divorce petition was dismissed on the ground that she was unable to lead any evidence to show that she was meted out with cruelty, but keeping in view the fact that the husband and wife could not reside together in a strained relationship and are staying separately for the last 07 years, not granting divorce to the appellant-wife would amount to cruelty.

Recently, Hon'ble the Supreme Court in **N. Rajendran vs. S. Valli**, 2022 (1) RCR (Civil) 847, has observed that consent of parties is not necessary to declare marriage dissolved. If, there is no possibility of husband and wife stitching together any kind of reasonable relationship as tie between parties have broken beyond repair, the marriage ought to be dissolved.

In this case, efforts were made to resolve the matrimonial dispute through the process of mediation, which is one of the effective mode of alternative mechanism in resolving the personal dispute. However, dispute could not be resolved and the mediation had failed. The appellant and respondent are staying separately for the last about 07 years. Marriage between the parties has broken down irretrievably and there is no chance of their coming together or living together again. At this time, asking the wife-appellant to go back to her husband and not granting her divorce would amount to cruelty.

In view of the above discussion, the present appeal is allowed and impugned judgment and decree dated 29.09.2018 are set aside. Marriage between the parties is dissolved and a decree of divorce is granted. Decree-sheet be drawn accordingly.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

25.05.2022
ajp

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