

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

FAO-M-3379-2018 (O&M)
Date of decision: 11.07.2022

Parminder Kaur

...Appellant

Vs.

Gurpreet Singh

...Respondent

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

Present: Mr. Nakul Sharma, Advocate,
for the appellant.

Mr. Vipul Aggarwal, Advocate,
for the respondent.

Ritu Bahri, J. (oral)

The present appeal has been filed against the judgment and decree dated 13.08.2018 passed by the Additional District Judge, SAS Nagar, Mohali, whereby petition filed by Parminder Kaur-appellant under Section 13 (ia) of the Hindu Marriage Act, 1955, seeking dissolution of marriage, has been dismissed.

Marriage of the appellant and respondent was solemnized on 12.09.2005 as per Sikh Rites at Amritsar. Out of this wedlock, no child was born. They cohabited as husband and wife till 18.04.2008. As per appellant-wife, on 12.01.2009, she was given severe beatings by the respondent-husband and his family members. She was saved with the intervention of neighbours. In this regard, FIR under Section 326 and 324 IPC was registered. Ultimately, the appellant was thrown out of the matrimonial house on 05.01.2014. Hence, the petition.

Upon notice, respondent-husband (appellant herein) filed written statement taking preliminary objections with regard to maintainability, clean hands, concealment of facts, estoppel etc.. On merits, all the allegations levelled by the apellant-wife were denied and prayer for dismissal of the petition was made.

From the pleadings of the parties, following issues were framed:

1. Whether respondent treated the petitioner with cruelty without any reasonable cause? OPP
2. Whether petitioner is entitled to decree of divorce by dissolution of his marriage with the respondent?OPP
3. Whether this present petition is not maintainable as alleged?
OPR
4. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court?
OPR
5. Whether the petitioner has no locus standi to file the present petition? OPR
6. Whether the petitioner is estopped by her act and conduct to file the present petition? OPR
7. Relief.

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

On the other hand, respondent-husband appeared into the witness box as RW-1 and examined Davinderbir Kaur (RW-2) and Inderjit

Singh (RW-3). Thereafter, learned counsel for respondent-husband closed his evidence.

Trial Court, after going through the evidence led by the parties, held that no evidence was led by the wife-appellant to show that she had made any complaint against her husband-respondent on account of harassment. It is also observed that the appellant-wife had left the matrimonial home at Amritsar and shifted to a rented house along with her husband, at Naya Gaon. It has been further observed that she (appellant) was given treatment at Adhlakha Hospital, Amritsar for two years i.e. from 2008 to 2010 for her infertility. She failed to lead any evidence to show that an FIR under Sections 326/324 IPC was registered against the respondent-husband when she was severely beaten by him. No copy of MLR was placed on record with respect to the alleged injuries caused by the husband on 12.01.2009. Further, it was admitted by the wife that she did her MBA while living with the respondent-husband from 2009 to 2011. No explanation was given by the wife, as to why she did not accompany her husband to Amritsar when his father was ill. There was nothing on record to show that she had met with cruelty in the matrimonial house. There were trivial issues and bald statements of allegations, which cannot constitute cruelty in the eyes of law. The trial Court has further observed that the cruelty should be of such nature, in which, it is not reasonably expected to live together. It has wider connotation in terms of its root and configuration. It should be of willful and unjustifiably conduct of the spouse of which degree, which may endanger the life of other spouse and may cause bodily injury to the other spouse and the complainant spouse has a reasonable apprehension of such danger. With these observations, petition filed by the

wife-appellant seeking divorce has been dismissed.

Heard, learned counsel for the parties.

Before this Court, the matter was referred for mediation and after having joint session with the parties, no amicable settlement could be arrived. Therefore, the matter was sent back to the Court on 07.11.2019 by Mr. Ashok Jindal, Mediator.

In the present case, marriage of the parties was solemnized way back in the year 2005. No child was born out of this wedlock. Almost 17 years have gone by and it is completely a dead marriage. It cannot be revived by giving direction to the appellant-wife to go and stay with her husband. In the present case, the appellant is not interested in staying with respondent-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 17 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 17 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 13.08.2018 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

11.07.2022
ajp

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