

2023:PHHC:086281-DB

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

FAO-254-2023 (O&M)
Date of Decision: July 5, 2023

Ved Parkash Appellant

Versus

Savita Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Raina Godara, Advocate for the appellant

LISA GILL, J.

1. This appeal has been filed by the appellant – husband challenging judgment and decree dated 04.11.2022 passed by the learned Family Court, Ambala.

2. Appellant – husband chose not to join proceedings before the learned Family Court despite service. Consequently, he was proceeded exparte on 06.10.2021. His application for setting aside said order dated 06.10.2021 was allowed on 18.04.2022 with cost of Rs.5,000/- to be paid by him on the next date of hearing i.e. 11.05.2022. However, cost was not deposited and the matter was listed by the learned Family Court for exparte arguments. Application for recalling of order dated 11.05.2022 filed on 04.08.2022 when the petition was listed for arguments, was also dismissed by the learned Family Court on 02.11.2022 and impugned judgment passed on 04.11.2022 whereby petition under Section 13 of Hindu Marriage Act,

1955 (for short – ‘the Act’) filed by the wife was allowed. Hence aggrieved, present appeal has been filed, challenging judgment and decree dated 04.11.2022.

3. Brief facts necessary for adjudication of the matter are that respondent – wife filed petition under Section 13 of the Hindu Marriage Act (for short – ‘the Act’) while pleading that marriage between the parties, which was statedly ‘love-cum-arranged marriage’ was solemnized on 15.05.2011 at Kurukshetra, according to Hindu Rites and ceremonies. Sufficient dowry, as per status of family of the wife, was given to the husband and his family members. A daughter was born from this wedlock on 30.04.2012. It is alleged that after few days of marriage, husband started harassing the wife and would also physically abuse her. After the birth of their daughter, intensity and frequency of atrocities perpetrated by him increased as he was not happy with the birth of daughter and even spoke of giving the daughter in adoption to someone else. It is further alleged that the husband would demand money from the petitioner and also pressurize her to bring it from her parental family, which she infact did on several occasions but the husband was never satisfied. Number of specific instances which are not being reproduced in toto for the sake of brevity have been narrated in the petition. It is pleaded that in the month of May/June, 2014, respondent quarreled with his own family members and shifted to rented accommodation at Barala alongwith the wife and child. He opened up a mobile accessories shop for which he raised money by pledging gold jewellery belonging to wife with Muthoot Finance, which was got released by the wife herself after three years. It is further pleaded that the husband was erratic in his behavior and could not control his aggression and anger, while

becoming capable of causing physical harm in rage. It is detailed that on one occasion in the month of August, 2015, husband alongwith himself forced her and minor daughter to stand at railway track. It is only after great difficulty that all of them were saved. In another incident on 26.03.2016, it is stated that husband tried to set the wife on fire but somehow she escaped. It is asserted that the wife then shifted to the house of her in-laws alongwith the daughter but husband still did not allow to live her peacefully. It is stated that after the incident/s in question, respondent would suddenly feel apologetic and plead forgiveness from the wife. Accordingly, wife would start residing with him again but frequency and intensity of his acts did not decrease leave alone cease. It is also pleaded that husband was in the habit of leveling false allegations qua character of the petitioner and created an atmosphere of tension and fear in the house.

4. It is alleged that wife started working after marriage as no financial support was provided by the husband and it became increasingly difficult to continue living with him on account of his behavior. It is stated that she went back to her parental home in June, 2017 but the husband threatened that if she did not come back to her matrimonial home, he would kill their daughter.

5. Allegations of appellant – husband indulging in unnatural sex and also pressuring her to earn money one way or the other, even through prostitution are raised. It is stated that wife became so depressed that in the month of May/June, 2019, she tried to commit suicide but was somehow saved. Incident in the month of July, 2019 is narrated wherein the appellant – husband is stated to have pressurized the wife to indulge in prostitution and on her refusal he attacked with scissors injuring her finger. It is stated

that he himself took her to the hospital but threatened her not to disclose true facts to anyone.

6. It is stated that FIR under Section 307 IPC was registered against the husband for trying to kill his father but the matter was settled later. One person namely Tarun helped the wife financially when the husband was in jail in FIR under Section 307 IPC. Upon release from jail, husband coerced the wife to register case under Section 376 against him. It is stated that she tried to bring out the truth on a number of occasions but was constrained due to fear and threat of the respondent. She could ultimately disclose the entire truth on 04.11.2019 only before the learned trial Court where she also expressed apprehension for her own life and that of their daughter. Wife alongwith minor daughter were sent to Nari Niketan where they remained till 25.11.2019. When they came out of Nari Niketan, appellant – husband is stated to have followed them. Wife resided at the house of a relative but on 02.12.2019 appellant – husband again waylaid the wife and threatened her, on which complaint was filed before the Police Post No. 5, Ambala. Complaint dated 04.12.2019 was again submitted by the wife before the Superintendent of Police, Ambala and when the appellant – husband came to know about the complaint, he became angry and threatened the wife. Proceedings under Section 107 and 151 Cr.P.C. were initiated. It is stated that appellant – husband could not tolerate the decision of the wife to live away from him and took that as a personal affront. A complaint had been submitted by wife on 16.07.2019 before SHO Woman Cell, Naraingarh. Matter was compromised with the appellant – husband stating that he would seek divorce before the District Courts but he did not adhere to the compromise on which a complaint was again submitted by the wife on

26.07.2020. Registration of FIR No. 102/2020 under Section 506 IPC at Police Station, Naraingarh is also detailed.

7. Psychologist at MM Hospital, Mullana was consulted where the husband was diagnosed with anti social personality disorder and wife was diagnosed to be under stress and trauma. It is stated that family members of the wife also broke relations with her because of the act and conduct of the appellant – husband. Various other allegations have been levelled in detail in the petition. With the said allegations and pleadings, wife sought dissolution marriage between the parties.

8. Notice was issued to the respondent, who appeared in person on 24.08.2021. Written statement to the petition was not filed neither any reply to the application under Section 24 of the Act filed. Husband thereafter did not appear before the learned Family Court and was proceeded exparte vide order dated 06.10.2021. Expate evidence was led and completed by the wife.

9. Application dated 31.01.2022 was filed by the appellant – husband seeking setting aside of order dated 06.10.2021 wherein he was proceeded exparte. This application was allowed by the learned Family Court on 18.04.2022 subject to deposit of Rs.5,000/- as costs to be paid to the wife and the matter was adjourned to 11.05.2022. However, on 11.05.2022, counsel for the appellant – husband appeared before the learned Family Court and expressed his inability to deposit cost of Rs.5,000/- as the appellant was stated to be under treatment for kidney stone. Cost was not deposited, therefore, the matter was adjourned to 30.05.2022 for exparte arguments.

10. Application was moved by the husband for recall of order dated 11.05.2022 which was dismissed on 02.11.2022. It is to be noted that there is

no mention in the grounds of appeal of application filed by the appellant for recalling order dated 11.05.2022 or order dated 02.11.2022 dismissing the said application. Petition under Section 13 of the Act was allowed by the learned Family Court on 04.11.2022 while holding that wife had succinctly proved the allegations as leveled by her in the petition under Section 13 of the Act and that the husband was found to have treated her with such cruelty which entitled her to seek decree of divorce. Aggrieved therefore, present appeal has been filed by the husband.

11. Learned counsel for the appellant vehemently argued that appellant was suffering from kidney problem and could not appear on the date fixed though he had initially appeared. Extremely heavy cost was imposed while setting aside order dated 06.10.2021, which was beyond his capacity but without taking note thereof, learned Family Court proceeded to pass exparte judgment and decree dated 04.11.2022. Appellant is not guilty of cruelty in any manner. Marriage between the parties was a love marriage and occasion should be afforded to the appellant to lead evidence and contest the case. It is, thus, submitted that this appeal be allowed. Judgment and decree dated 04.11.2022 passed exparte be set aside and the matter be remitted before the learned Family court, to be decided afresh after allowing the husband to lead his evidence.

12. We heard learned counsel for the appellant and have gone through the record of the case, which was requisitioned from learned Family Court through e-mail.

13. In order to support allegations leveled in the petition, wife has duly testified as PW1 and her Aunt (*Mami*) has testified as PW2. Photocopy of complaints dated 16.07.2020, 26.07.2019, 02.12.2019, 04.12.2019, copy

of Calendara under Sections 107, 151 Cr.P.C., complaint to the Superintendent of Police by the wife, copy of FIR No. 346/2020 and FIR No. 102/2020 alongwith the copy of compromise/affidavit of the appellant – husband alongwith other documents, which are on record have been perused by us.

14. Copy of report from MM Institute of Medical Sciences and Research, Department of Psychiatry regarding appellant – husband is also on record, which indicates that the complaint presented by the husband was repetitive thoughts and difficulty in controlling aggression. It is duly noted in the report that he had hit his father with a brick two years ago (grievous hurt), in which he was arrested. It is noted that the patient harms others and feel satisfied after hurting them and does not feel guilt of his acts and has no fear of consequences and explains things repeatedly. Memory and cognitive functions are stated to be intact with the patient also having made suicidal attempt. The provisional diagnosis given qua the husband is of ‘antisocial personality’. In the medical prescription dated 15.01.2020 it is mentioned that he had beaten his family the day before and that he was off medication since 2/3 days. PW1 in her affidavit (Ex.PW1/A) has given a consistent version in tune with her petition. PW2 has completely supported the case of the wife.

15. Perusal of the record reveals that the appellant had duly appeared in person before the learned Family Court on 24.08.2021 after receipt of notice but never bothered to either the file written statement or reply to application under Section 24 of the Act. He was proceeded exparte on 06.10.2021 and application for setting aside the same was filed on 31.01.2022. His application for setting aside exparte proceedings vide order

dated 06.10.2021 was allowed by the learned Family Court vide order dated 18.04.2022 wherein it is categorically mentioned that pleas of the appellant did not inspire much confidence and his only motive was to cause delay. However, in the interest of justice, application was allowed subject to deposit of cost of Rs.5,000/-. Appellant admittedly did not deposit said cost and was yet again proceeded ex parte. He again filed an application for recall of order dated 11.05.2022 only on 04.08.2022 when the matter was listed for arguments before the learned Family Court. This application was dismissed by the learned Family Court on 02.11.2022 while observing that he was deliberately not depositing the cost imposed by the Court and that only motive of the appellant appeared to be to delay proceedings. It is observed by the learned Family Court in order dated 02.11.2022 as under:-

“5. After hearing the arguments and after going through the case file, it is observed that the respondent – petitioner had filed the petition under Section 13 of the HMA seeking divorce from the respondent and the respondent appeared in person but did not appear on 06.10.2021 when he was proceeded ex parte by the predecessor of this court and the case was fixed for evidence of the petitioner. The petitioner did not examine any witness on two effective dates and she examined two witnesses on 17.01.2022 and closed her evidence and when the case was fixed for arguments on 31.01.2022 the applicant- respondent moved the application for setting aside ex parte order. The predecessor of this court after considering all the facts gave a chance to the applicant-respondent to contest his claim and allowed his application which was moved at a belated stage by imposing a cost of Rs.5,000/- vide order dated 18.04.2022. It was mentioned in the order that a case has already been filed by the applicant-respondent for custody of the minor daughter and the petitioner had also filed a petition for custody of the minor

daughter and the applicant- respondent was appearing simultaneously in both the petitions personally and through his counsel on 06.07.2021. 29.07.2021. 14.09.2021, 21.10.2021, 30.11.2021, 19.01.2022, 07.02.2022. 08.02.2022, 21.02.2022, 28.02.2022, 14.03.2022, 17.03.2022. It was also observed that the respondent also filed writ petition before the Hon'ble Punjab and Haryana High Court for custody of minor daughter and it was not possible that the respondent forgot to appear in the present petition under the impression that it would get adjourned. The applicant-respondent appeared before the court through counsel on 11.05.2022 but did not make the payment which was a pre-condition for setting aside the ex parte order dated 06.10.2021 against him and accordingly he was again treated ex parte vide order dated 11.05.2022 and the case was fixed for ex parte arguments. The ex parte arguments were not advanced by the counsel for the petitioner on two dates and adjournment was sought and when the case was fixed for arguments on 04.08.2022, the application in hand was moved. The applicant-respondent has pleaded that he was suffering from kidney stone and was under treatment and advised rest but he has not produced any certificate from a government hospital and has placed on record only certificate of BAMS without any prescription or any treatment or any hospitalization and the same cannot be taken into consideration. Moreover, it has already been observed that he was regularly appearing himself or through his counsel in the case filed by him for custody of the child.

6. The perusal of case file shows that respondent was proceeded ex parte on 06.10.2021 and it is a fact that the respondent was appearing in his own case filed under the Guardianship Act and deliberately did not make payment of costs imposed by the court. He not only delayed the proceedings but also moved applications at the time when the case was about to be decided and he has intentionally disobeyed the order dated 18.04.2022

and there is no irregularity or illegality in order dated 11.05.2022 and he has not challenged the order dated 18.04.2022 thus in the aforesaid circumstances, application for recalling the order dated 11.05.2022 is dismissed.”

16. In the present appeal, it has been stated that learned Family Court had imposed extremely heavy cost, which was beyond his capacity. There is no such material before us which impels us to accept the plea that the appellant is even unable to pay the cost of Rs.5,000/-. Moreover, application for recall of order dated 11.05.2022 was filed only on 04.08.2022 when the matter was listed for arguments before the learned Family Court. Thus, lack of bona fides on the part of the appellant is apparent.

17. It is pertinent to note at this stage that the appellant has not placed on record copy of order dated 02.11.2022 and neither has he challenged the same. There is in fact not even a mention of this order in the grounds of appeal. It is only after a query was put to learned counsel during the course of arguments that certified copy of order dated 02.11.2022 was furnished in Court. In order to test the bona fides of the appellant, matter was adjourned to enable learned counsel for the appellant to seek instructions as to whether the appellant would be ready and willing to take some steps for securing future of the minor child. The same was met with no positive response.

18. Reasons given by the appellant for not joining the proceedings are not borne out from the record and lack of bona fides on the part of the appellant is apparent. Apart from the fact that on one hand the appellant is taking the plea of being unable to deposit the amount of Rs.5,000/- on account of financial incapacity, he also seeks to place reliance on certificate

of BAMS doctor of Ambala, who has issued certificate dated 10.05.2022 that the appellant is unable to undertake any journey from 10.05.2022 to 12.05.2022 due to acute renal pain. Report dated 25.05.2022 attached alongwith does not indicate renal calculi as has been stated before us and before the learned Family Court. Perusal of the record reveals that appellant has at all times tried to delay the proceedings by adopting tactics which clearly reflect lack of bonafides. This conduct in itself constitutes cruelty to the wife. The uncontroverted evidence on record proves that that the wife is entitled to the decree of divorce on account of cruel conduct of the appellant. No reasonable person would be expected to continue or resume cohabitation with such a spouse in such conditions.

19. Learned counsel for the appellant was unable to point out any infirmity, irregularity or illegality in the impugned judgment and decree dated 04.11.2022.

20. Keeping in view the facts and circumstances of the case, in our considered opinion, no ground is made out for setting aside judgment and decree dated 04.11.2022 passed by the learned Family Court, Ambala.

21. No other argument had been addressed.

22. Present appeal is, accordingly, dismissed with no order as to costs.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

July 5, 2023

rts

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