

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 1195 of 2022(O&M)

Date of Decision:12.01.2023

Manjot Singh

.....Appellant

Versus

Rajpreet Kaur

..... Respondent

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Lupil Gupta, Advocate
for the appellant.

LISA GILL, J(Oral).

Appellant-husband has filed this appeal, challenging interim order dated 10.02.2022, passed by the learned Family Court, Sirsa.

Appellant-husband filed a petition under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act'), seeking restitution of conjugal rights. It is pleaded that marriage of the appellant and respondent was solemnized on 23.02.2019 at Gidderbaha, in a simple manner. One son was born out of this wedlock on 09.04.2020 at Bathinda. It is further stated that the respondent is serving CRPF as a Constable and at the time of marriage was posted at Gandhi Nagar (Gujarat). She was thereafter posted at Delhi. The appellant claimed that he also resided with the respondent at Delhi for about two (02) months, but her behavior was not correct and proper. Respondent has been described as a quarrelsome lady, harassing the appellant without any cause at the instigation of her parents and family

members, refusing to prepare meals and do other domestic works; besides, leaving the matrimonial home without permission of the appellant.

Shorn of unnecessary details, appellant claimed that respondent-wife had left the matrimonial home on 14.10.2020 without any reasonable cause while taking away gold ornaments and other valuables etc. Panchayats were convened, but to no avail, leading to filing of the petition under Section 9 of the Act.

The allegations were denied by the respondent-wife. She admitted that she was posted at Delhi and in receipt of salary of Rs. 30,000/- per month. She asserted that she was willing to live with the appellant, with the averment that despite her salary, she was not able to maintain herself and the minor child at the same level of comforts which she was enjoying in the matrimonial home while living with the appellant.

Learned Family Court, Sirsa, while taking into account the facts and circumstances directed that the appellant should place on record photocopy of the FDR's in his own name for a sum, more than Rs. 2,00,000/- or a bank account statement showing that such an amount is lying reserved therein for couple of months in order to enable the Court to draw the inference that petition under Section 9 of the Act had been instituted with sincerity and was not a measure to harass and humiliate the respondent without any actual preparation to bear the living expenses of parties and minor child in the matrimonial home. The matter was then adjourned to enable the appellant to do the needful.

Aggrieved therefrom, present appeal has been filed by the appellant-husband on the ground that such a condition is unjustified and uncalled for as the respondent-wife herself is earning.

It is submitted that the appellant has been disowned by his parents and he is not in a position to deposit the said amount. It is asserted that the learned Family Court has sidetracked the actual issue whereas it was only required to consider and determine whether the respondent is ready to join the company of the appellant or not. The appellant, it is stated has been treated with cruelty and indifference and in such a situation, there is no question of calling upon the appellant to create FDR's of over Rs. 2,00,000/- or show deposit of such amount in his account. It is informed that the petition under Section 9 of the Act, filed by the appellant is still pending final adjudication before the learned Family Court, Sirsa. It is thus prayed that this appeal be allowed and the learned Family Court, Sirsa, be directed to continue with the proceedings which are pending before it, without the precondition as imposed.

We have heard learned counsel for the appellant and have gone through the file with his able assistance.

It is a matter of record that the appellant has filed a petition under Section 9 of the Act seeking restitution of conjugal rights. It is noted by the learned Family Court, Sirsa that the respondent had reflected her willingness to live with the appellant. In such a situation, it is duly noted by the learned Family Court, Sirsa that the appellant has admitted that he is holding two bank accounts i.e., one in SBI Dabwali and other in Gramin Bank, Masitan, but he has not furnished copies of his bank statements for the last three years despite it being a requirement prescribed in the affidavit. It is to be noted that even before this Court, the said details are not forthcoming.

Learned Family Court, Sirsa, has only directed the FDR to be prepared in the name of the appellant himself or in the alternate to show his

bank account statement reflecting such amount to be lying reserved for few months. It is not as if the learned Family Court, Sirsa, has directed the appellant to deposit the same in favour of the respondent or the minor child. Therefore, the averment in the grounds of appeal that the respondent is not entitled to any maintenance, is irrelevant. Such condition has been correctly imposed by the learned Family Court to ensure the bona fide nature of the litigation initiated by the appellant.

Perusal of file reveals that this matter was adjourned on 12.10.2022 by a Coordinate Bench, to enable learned counsel for the appellant to seek instructions as to whether any agricultural land can be transferred in favour of the minor child to secure his future.

Learned counsel for the appellant states that the suit for mandatory injunction seeking eviction from the house comprised over 10K-16M, has been instituted by the father of the appellant and moreover, there is no land available for transfer to the minor child. Pointed query by the Court as to whether some amount can be deposited in FD in favour of the minor child, has been met with a clear cut negative response. It is apparent that the appellant has taken a plea that his father has filed a suit for eviction against him as well as the present respondent, seeking their eviction. Father of the appellant clearly does not wish for the couple to live in the premises owned by him. Therefore, it is correctly observed by the learned Family Court, Sirsa, that in such a situation, the husband should be having the wherewithal to show that he shall be able to maintain his wife and child. It is reiterated that even before this Court, there are nothing but evasive responses in respect to the income of the appellant, despite pointed queries by us.

In the given factual matrix, we do not find any ground for interference in impugned order dated 10.02.2022, passed by the learned Family Court, Sirsa. Learned counsel for the appellant is unable to point out any illegality or infirmity in impugned order dated 10.02.2022, passed by the learned Family Court, Sirsa.

Appeal is accordingly dismissed. However, it is directed that in case, the appellant in terms of order dated 10.02.2022, deposits photocopy/ies of the FDR/s in his own favour or photocopies of his bank account statement reflecting the said amount lying reserved for a couple of months on or before 15.03.2023 in the pending proceedings before the learned Family Court, Sirsa, the same be accepted.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

January 12, 2023.

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.