

2024-PHHC-119694-DB



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

FAO-M-1-2024 (O&M)

Date of decision: 10.09.2024

KRISHAN DEV SINGH

...Appellant

Versus

JYOTI DEVI

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Abhishek Chha, Advocate, for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 06.09.2023, passed by the Learned Civil Judge (Junior Division), Chandigarh, whereby the petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') filed by the appellant-husband has been dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter alia*, averring that his marriage with the respondent-wife was solemnized on 20.07.2016 according to Hindu rites and out of the said wedlock, a male child was born on 21.12.2018. It was further asserted that initially the respondent stayed at the house of the appellant at Kangra, (HP) for one week and thereafter, she started residing with him at Panchkula in a rented accommodation. However, later on, the respondent had started shouting over petty matters. The appellant tried his level best to reconcile the matter, but the

respondent was adamant to go to her parental house at Pathankot. It was further asserted that the sister and brother-in-law (*Jija*) of the respondent started interfering in the matrimonial life of the parties. After the birth of the male child, the parties rejoined the company of each other at Panchkula, but the behavior of the respondent did not change. The respondent was putting pressure upon the appellant to take some rented accommodation near the residence of her sister at Dhanas and the appellant, acceding to the said demand took a rented accommodation at Dhanas in June, 2020. The respondent-wife told the appellant on the mobile phone that her sister had called her at her residence at Dhanas for celebration of Lohri. When the appellant reached the respondent-wife's sister's house, then her brother-in-law (*Jija*) refused to send her with the appellant by saying that she would stay at their house along with the minor child and they would take care of them. It was asserted by the appellant that he had made all efforts to bring back the respondent-wife to her matrimonial home, but she refused to come back. It was further asserted that on 20.01.2022, the appellant again went to the respondent's sister's house, but instead of sending the respondent back to her matrimonial home, her sister and brother-in-law (*Jija*) had demanded a sum of Rs.10,000/- per month as maintenance for the respondent and the minor child. It was further asserted that the appellant was ready and willing to cohabit with the respondent, but she had flatly refused to rejoin the company of the appellant.

3. Despite service of the notice, the respondent did not appear to contest the case and she was proceeded as *ex parte* vide order dated 19.05.2022 passed by the learned trial Court.

4. On the basis of pleadings of the parties the following issues were framed by learned trial Court:-

“1. Whether petitioner is entitled to a decree for Restitution of Conjugal Rights? OPP

2. Relief.”

5. The appellant in his *ex parte* evidence examined himself as PW-1 and besides leading documentary evidence Ex.P1 to Ex.P2 and Mark-B. .

6. The learned trial Court, after taking into consideration the contentions of the appellant and the evidence on record, dismissed the petition filed by the appellant.

7. Learned counsel appearing for the appellant has vehemently argued that once the respondent-wife did not choose to appear before the learned trial Court and she was proceeded *ex parte*, the case set up by the appellant stood proved and more so, the appellant had led sufficient and cogent evidence on record to prove that the respondent had left his company without any justifiable reason. It is further submitted that the finding of the learned trial Court that the appellant could not produce any marriage certificate on the basis of which the solemnization of marriage could be established, is totally unsustainable as it was the pleaded case of the appellant that the marriage between the parties was solemnized on 20.07.2016 and a male child was born out of the said wedlock on 21.12.2018. Thus, it is

submitted that the findings of the learned trial Court, being untenable in the eyes of law, are liable to be set aside.

8. We have heard learned counsel for the appellant and have also gone through the impugned order passed by the trial Court.

9. The question that arises for consideration by this Court is whether the impugned order passed by learned trial Court, requires any interference.

10. It was found by the learned trial Court that the appellant did not produce any evidence from which the solemnization of the marriage between the parties could be established. It was further observed that no marriage certificate was produced and no relative of the appellant, who had participated in the marriage, was examined by him. It was further observed that no witness was examined by the appellant to prove that the appellant and the respondent had cohabited as husband and wife till the time, she had stayed with the appellant.

11. The findings recorded by the learned trial Court cannot be said to be suffering from any illegality or perversity especially, when the appellant did not produce any marriage certificate nor did he examine any witness in support of the solemnization of such marriage. Still further, no evidence was brought on record that the appellant and the respondent had cohabited as husband and wife, till the time she had allegedly left the company. Though the appellant had produced birth certificate of minor child Shivansh, yet it may be noticed that before establishing the factum of the birth of the said child, the appellant was required to establish that the respondent was his legally wedded wife. However, the appellant failed to do so, which led to the

passing of the impugned judgment and decree. Along with the present appeal, the appellant has filed CM-962-CII-2024 under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence i.e. marriage registration certificate dated 11.01.2022, copy of marriage registration register dated 25.04.2017 and copy of marriage certificate dated 27.07.2016 (Annexure A-1 to A-3). However, it could not be explained as to why such documents could not be produced before the learned trial Court. Though in a given case a party can be allowed to lead additional evidence yet it must be explained by the said party to the satisfaction of the Court that there was sufficient cause or grounds which had prevented him/her from leading such additional evidence.

12. As in the present case, the appellant has failed to show that he was prevented by sufficient cause/grounds from leading such evidence, we find no ground to allow such application of the appellant.

13. No other point has been urged.

14. In view of the above, we do not find any merit in the present appeal and the same is hereby, dismissed.

15. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

10.09.2024
Himanshu

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